SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 558

AMERICAN TRUCKING ASSOCIATIONS, INC., SOUTHERN MOTOR CARRIERS' RATE CONFERENCE, FLAMINGO TRUCK LINES, INC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, LEGH R. POWELL AND HENRY W. ANDERSON, RECEIVERS OF THE SEABOARD AIR LINE RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action. No. 285

AMERICAN TRUCKING ASSOCIATIONS, INC., 1424 16th Street, N. W., Washington, D. C.; Southern Motor Carriers' Rate Conference, 873 Spring Street, N. W., Atlanta, Ga.; Flamingo Truck Lines, Inc., Second and Pearl Streets, Jacksonville, Fla.; Hunt Truck Lines, 708 Whiting Street, Tampa, Fla.; Great Southern Trucking Co., 1863 Clarkson Street, Jacksonville, Fla.; Central Truck Lines, Inc., 1001 Jackson Street, Tampa, Fla.; K & L Transportation Company, Inc., 777 West Whitehall Street, S. W., Atlanta, Ga.; St. Johns River Line Company, 10 South Newman Street, Jacksonville, Fla., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT TO SET ASIDE ORDERS OF THE INTERSTATE COMMISSION—Filed October 21, 1943

To the Honorable Justices of the District Court of the United States for the District of Virginia:

The plaintiffs being aggrieved and injured by certain orders of the Interstate Commerce Commission, complain to this Honorable Court for the purpose of having said orders set aside, and in support thereof, respectfully show unto the Court that:

[fol. 5] I

Jurisdiction

Jurisdiction to review and set aside orders of the Interstate Commerce Commission is vested in this Court in and by an act of Congress, known as the District Court Jurisdiction Act, 38 Stat. L. 220; 28, U. S. C. A. 41, Sub. 8, 28, 43-48 and particularly the Act of Oct. 22, 1913, 38 Stat. 219.

II

Plaintiffs

Plaintiff American Trucking Associations, Inc., is a corporation under the laws of the District of Columbia with general offices at 1424 16th Street, N. W., Washington, D. C., and it is the national organization of the trucking industry and is owned and maintained by said industry, and appeared and participated in the proceedings before the Interstate Commerce Commission involving matters herein complained of, on its own behalf and on behalf of its members, who constitute a class too numerous to mention and for whom it customarily appears in proceedings before the Interstate Commerce Commission and before the courts.

Plaintiff Southern Motor Carriers' Rate Conference, is a corporation under the laws of the State of Georgia, with general offices at 873 Spring Street, N. W., Atlanta, Georgia, and it is the commerce conference and tariff publishing agent for its members in southeastern states and it is owned and maintained by said members, and it appeared and participated in the proceedings before the Interstate Commerce Commission involving the matters herein complained of, on behalf of its members who constitute a class too numerous to mention, and it customarily appears in proceedings before the Commission to represent the interests of its members.

Plaintiff Flamingo Truck Lines, Inc., is a common carrier of property by motor vehicle with general offices at Second and Pearl Streets, Jacksonville, Florida, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a cer- [fol. 6] tificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff Hunt Truck Lines is a common carrier of property by motor vehicle with general offices at 708 Whiting Street, Tampa, Florida, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business

and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff Great Southern Trucking Co., is a common carrier of property by motor vehicle with general offices at 1863 Clarkson Street, Jacksonville, Florida, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff Central Truck Lines, Inc., is a common carrier of property by motor vehicle with general offices at 1001 Jackson Street, Tampa, Florida, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff K & L Transportation Company, Inc., is a common carrier of property by motor vehicle with general offices at 777 West Whitehall Street, S. W., Atlanta, Georgia, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff St. Johns River Line Company is a common carrier of property by motor vehicle with general offices at 10 South Newman Street, Jacksonville, Florida, and operates [fol. 7] in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

The aforesaid plaintiffs have a common interest in the subject matter of this complaint and in obtaining the relief sought.

III

Preliminary Statement

There is attached to the complaint an appendix which is made a part hereof and for convenience numerous exhibits therein are referred to instead of being cited or quoted in the body of the complaint.

Plaintiffs show the Court that:

The numerous separate applications of the railway for certificates of convenience and necessity to engage in motor carrier operations, as shown by Exhibits "A-1" to "A-3," constitute in fact and substance one application for integrated operating rights.

The repetition of applications for rights disclosed a substantial program for the conduct of highway operations generally paralleling the railway system and involving several states, and that the separate applications had the effect of concealing the true nature of the applications and of evading the statutory requirements for a hearing by the Commission.

The extent and scope of the proposed operations were disclosed to the Commission through numerous applications, as shown by Exhibits "A-2" and "A-3," prior to any action by the Commission referring the applications to separate Joint Boards for separate hearing and determination.

The Commission disregarded the disclosure of the extent and scope of the pending applications considered together, and arbitrarily and capriciously assigned the several separate applications for separate hearings by dockets, states and segments of highways, before several Joint Boards, as shown by Exhibits "B-1" and "B-2," which exhibits represent typical orders of the Commission appointing and designating Joint Boards for the hearing of said applications.

[fol. 8] The Commission arbitrarily and capriciously made alleged findings without evidence and failed and refused to perform its statutory duties and exceeded its jurisdiction in exempting the railroad from the statutory provisions of the Interstate Commerce Act, relating to the publication of tariffs.

The Seaboard Air Line Railway Company, through its receivers and by numerous applications, applied to the In-

terstate Commerce Commission for authority to conduct operations by motor vehicle and the said Commission granted all of said applications without having conducted a proper hearing to develop facts required for the required statutory findings.

The said Commission failed and refused to hold hearings as required by law and improperly and unlawfully delegated the hearing of said applications to several Joint Boards, and that by reason of the lack of jurisdiction and refusal of said Joint Boards to hear the evidence, plaintiffs were denied a fair and proper hearing.

IV

Orders Complained of

(a) The orders and matters complained of involve a series of proceedings before the Interstate Commerce Commission as shown by Exhibit "A-2."

All of the proceedings before the Interstate Commerce Commission are titled Seaboard Air Line Railway, Legh R. Powell, Jr., and Henry W. Anderson, Receivers—Applications.

The docket numbers of the Interstate Commerce Commission are MC 86687 and MC 86687 Sub Nos. 1 to 10, inclusive, and MC 86687 Sub. Nos. 15, 18 and 19. The published reports appear in 17 M. C. C. 413; 21 M. C. C. 773; 28 M. C. C. 5 and 34 M. C. C. 441.

All of the dockets, as aforesaid, represent applications by the Seaboard Air Line Railway for certificates of convenience and necessity authorizing said railway to conduct operations as a common carrier by motor vehicle, and taken together, they involve the states of Virginia, North Carolina, South Carolina, Georgia and Florida.

The dockets represent separate applications for certificates of convenience and necessity for segments of highway and were heard by several Joint Boards and sub-
[fol. 9] sequently and without further hearing or evidence the Commission reversed or modified the Joint Boards' reports.

Upon consideration of various conflicting and inconsistent recommended reports and orders by the several Joint Boards the Commission reviewed the applications and found the railway applicant entitled to a certificate of con-

venience and necessity, subject to certain conditions which were prescribed and subject to the continuing jurisdiction of the Commission to change or modify its orders.

A certificate was issued by the Commission on November 30, 1942 (Exhibit "T"), pursuant to orders of July 6, 1942, 34 M. C. C. 441 (Exhibits "S").

The application by the railroad to the Commission in Docket MC 86687 Sub 4 under date of January 7, 1937, is typical, and the pertinent provisions thereof are attached hereto and identified as Exhibit "A-1."

A summary of the several applications showing the docket numbers, the points involved, dates of filing, dates of original hearings, dates of consolidated hearings, dates of Joint Board original orders, dates of Commission's original order, date of Commission's first modified order, date of Commission's second modified order, and date of the certificate, is attached hereto and identified as Exhibit "A-2."

A map showing the highway segments covered by the various applications involved in these proceedings, together with the highway segments covered by other applications which have been made by the railroad, is attached hereto and identified as Exhibit "A-3."

(b) Plaintiffs participated in the proceedings before the Joint Boards and before the Commission in the hearings concerning the applications and said participation is evidenced by the entering of appearances at the original hearing and further hearing, in accordance with the applicable rules of procedure of the Commission, and the appearances and participation is further evidenced by formal petitions for intervention as indicated by Exhibit "G."

Typical orders of the Commission permitting appearances and interventions are attached hereto and identified as Exhibits "H," "I" and "J."

A chronological summary of the proceedings involving the various applications, hearings, exceptions, petitions, motions and orders is attached hereto and identified as Exhibit "U."

[fol. 10] In addition to the various applications and orders covered by this complaint, various other applications were filed as shown by Exhibits "A-3" and "V."

V

(a) The appointment and designation of several Joint Boards composed of representatives of only one or two states to hear the several applications which in the aggregate involved five states, was contrary to the provisions of the Interstate Commerce Act, the pertinent provisions of which are as follows:

> "Sec. 205(a). The Commission shall, when operations of Motor Carriers or brokers conducted or proposed to be conducted involve not more than three states, and the Commission, may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three states, refer to *a* Joint Board for appropriate proceedings thereon, any of the following matters arising in the admission of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Application for certificate, * * *. The Commission, in its discretion, may also refer to a Joint Board any investigation and suspension proceeding or other matter not specifically mentioned above which may arise under this part. The Joint Board to which any such matter is referred *shall be composed solely of one member from each state within which the motor carrier or brokerage operations involved in such matter are or are proposed to be conducted* * * * in acting upon matters so referred, Joint Boards shall be vested with the same rights, duties, powers and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon: * * * " (Italics supplied.)

In view of the fact that the several applications involve more than three states, the statutory provisions required the Commission to either conduct a hearing itself or to refer the matter to *a* Joint Board composed *"solely of one member from each state within which the motor carrier or brokerage operations involved in such matters are or are proposed to be conducted."*

In failing and refusing to either conduct the hearings itself or to refer the applications to a properly constituted

Joint Board, the Commission acted arbitrarily and capriciously.

(b) The Commission and the Joint Boards failed and [fol. 11] refused to hear and receive evidence upon which the statutory findings must be made and said findings were either not made or made without evidence.

The Interstate Commerce Act provides as follows:

> "Sec. 213(a)(1). Whenever a consolidation, merger, purchase, leased operating contract, or acquisition of control is proposed under this section, the carrier or carriers or the person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall, notify the Governor of each state in which any part of the properties or operations of the carriers involved in which the proposed transaction is situated, and also such carriers and the applicant or applicants and other parties known to have a substantial interest in the proceeding of the time and place for a public hearing * * *: Provided, however, that if a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier other than a motor carrier or affiliated therewith within the meaning of Section 5(8) of Part I, the Commission *shall not enter such an order unless it finds* that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations *and will not unduly restrain competition.*"
>
> (Italics supplied.)

(Section 213(a)(1) was enacted in 1935, amended in 1938, repealed in 1940 and its provisions were, in substance, reenacted in 1940 as parts of Section 5 of the Interstate Commerce Act.)

The pertinent provisions of Section 5 as amended in 1940 are as follows:

> "Section 5(a) (b) * * *: Provided, that if a carrier by railroad subject to this part, or any person which is controlled by such a carrier or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction

involving a motor carrier, the Commission *shall not enter such an order unless it finds* that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and *will not duly restrain competition.*"

(Italics supplied.)

In failing and refusing to receive plaintiff's evidence the Commission disregarded its statutory duty and acted arbitrarily and capriciously.

(c) The Commission disregarded the provisions of Section 205 respecting hearings by the Commission or by prop-
[fol. 12] erly constituted Joint Boards and disregarded the provisions of old Section 213 and new Section 5, respecting the required findings in cases involving railroad operations of motor carriers, and disregarded the statutory directions of the National Transportation Policy, and arbitrarily and capriciously treated each of the railroad's applications as a separate operation and directed hearings thereon by limited, restricted and improperly constituted Joint Boards and thereby denied the protestants a fair and reasonable hearing; and the Commission failed and refused to receive evidence and to require the production of evidence, and to conduct the hearings in a manner required by statute to enable the Commission to develop the essential information and facts from which the Commission could make the findings required by statute.

(d) In addition to the specific provision of Section 205, 213 and 5, the National Transportation Policy requires that all specific provisions be administered in relation to said policy. The National Transportation Policy is as follows:

It is hereby declared to be the National Transportation Policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without

undue discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several states and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. *All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.*

(Italics supplied.)

The Commission acted arbitrarily and capriciously in failing and refusing to fairly and impartially give effect to all of the applicable provisions of the Interstate Commerce Act.

VI

In directing the hearing of the several applications by several separate and limited Joint Boards, the Commission denied the protestants before the Commission, plaintiffs [fol. 13] here, a fair and reasonable hearing in that they were deprived of an opportunity to show the extent and scope of the operations proposed to be conducted by the railroad; the competitive effect of said proposed operations; the extent and scope of public service being rendered by protestants; their ability to perform the service proposed to be conducted by the railroad as a motor carrier operator; and they were further deprived of a fair and reasonable hearing in that protestants were denied an opportunity to show that the operations proposed to be conducted by the railroad and the manner of conducting the proposed operations would result in undue restraint of competition.

Each separate Joint Board refused to hear the protestants before the Board with respect to the services which they were rendering and were able and willing to render, and refused to hear and consider the competitive effect and restraint of competition which would flow from the operations represented by the aggregate of the applications of the railway.

Protestants before the Joint Board put in issue the jurisdiction of the Joint Boards and the rulings of the separate

Joint Boards respecting jurisdiction and hearing of evidence relating to other applications, and the effect of such other applications on protestants.

The rulings of the Joint Board are illustrated by typical excerpts from the record and shown in Exhibit "B-3," attached hereto.

The refusal of the Joint Boards to hear evidence and consider the relationship of other pending railroad applications was arbitrary and capricious and denied protestants an opportunity to test pertinent matters having to do with public convenience and necessity, destructive and wasteful competition, and restraint of competition, and were arbitrary and capricious.

VII

When the motor carrier protestants were advised that each separate Joint Board would restrict its inquiry to the particular segments of highways allocated to it by the Commission for hearing and would refuse to admit evidence respecting the pendency of other applications and the effect of operations over and through the combined applications, and were further advised that the railway applicant proposed to conduct through operations involving more than one [fol. 14] application or segment of highway, then protestants advised the Commission through motions and petitions that the hearings were being conducted improperly through Joint Boards and through improperly constituted Joint Boards, and prayed for a consolidated hearing and put these matters in issue before the Commission. See Exhibits "C," "D" and "E." The Commission arbitrarily and capriciously denied the motions and petitions for consolidated hearings. See Exhibit "F."

Although protestants' motions for consolidated hearing were first filed with the Commission on June 11, 1937, by wire, and June 14, 1937, by formal petition, as shown by Exhibits "C" and "D," and repeated January 27, 1938, as shown by Exhibit "F," the Commission arbitrarily and capriciously disregarded the motions of June 11 and 14, 1937, until the Joint Board hearings had been closed on most of the applications and finally denied the motion of January 27, 1938, for consolidation and further hearing, on February 16, 1938, as shown by Exhibit "F."

By reason of the refusal of the Joint Boards to consider the relationship of the several pending railroad applica-

tions, as shown by Exhibits "A-3" and "N", and the failure and refusal of the Commission to grant protestants' motions of June 11 and 14, 1937, and January 27, 1938, Exhibits "C," and "D" and "E," the hearings before the Joint Boards were concluded on a record which denied protestants a fair and reasonable hearing and an opportunity to present their evidence.

VIII

In addition to the refusal of the Joint Board to consider the relationship and effect of other pending railroad applications, and the refusal of the Commission to hear the case or to require it to be heard by a properly constituted Joint Board, the Joint Boards refused to hear *the* consider evidence pertinent to the issue of public convenience and necessity. The further matters which the Joint Boards refused to hear and consider related to:

1. The complete cost of the proposed truck operations.
2. The tonnage to be handled by truck.
3. The revenues to be derived from the truck operations.
4. The segregation of rail and motor expenses and revenues.
5. The economic effect on existing motor carriers.

[fol. 15] 6. The willingness of ability of existing motor carriers to perform the service.
7. Destructive competition flowing from subsidized truck operations.
8. The refusal of the railroad to enter into arrangements with the independent motor carriers.
9. Traffic to be diverted from existing independent motor carriers.
10. The motor carrier operations of the Railway Express Agency.
11. The intention of the railroad to consolidate its motor carrier operations.
12. The reasonableness of proposed rate and accounting practices.
13. The distinction between railroad convenience and public convenience.

By reason of the arbitrary and capricious refusal of the Joint Boards and the Commission to consider these matters

protestants were unable to defend themselves against unnecessary, unfair and destructive competition, and undue restraint of competition, and were denied a fair and reasonable hearing.

By reason of the failure and refusal of the Joint Boards to hear and consider, as hereinbefore set forth, evidence bearing on the usual criteria for showing of public convenience and necessity, the Joint Boards and the Commission arbitrarily, capriciously and unlawfully adopted the test of railroad convenience, as distinguished from public convenience and necessity, as a basis for the granting of motor carrier operating rights to railroad applicants.

IX

Upon the hearing of the several applications by the several Joint Boards, as aforesaid, certain reports and recommended orders were submitted to the Commission by the respective Joint Boards. These reports and recommended orders granted certain operating rights sought by the applications and denied the applications in part and included findings and statements of the reasons therefor. The report and recommended order of Joint Board No. 103, covering Dockets MC-86687 Sub 2 and Subs 4 to 6, is typical and is attached hereto and identified as Exhibit "K." The report [fol. 16] and recommended order of the Joint Board, as shown by Exhibit K, recommended the granting of part of the rights applied for in Sub 4 and recommended denial of the rights sought in Subs 2, 5 and 6. Upon the filing of exceptions by both applicant and protestants, respecting the report and recommended orders of the various Joint Boards, Division 5 of the Commission took jurisdiction and without further hearings issued a consolidated report and order covering dockets Subs 1 to 10, 15 and 18, which report and order was issued July 11, 1939 (reported in 17 M. C. C. 413), and is attached hereto and identified as Exhibit "L."

The report and order of Division 5, Exhibit "L," reversed the Joint Boards insofar as said Boards had recommended denial of any of the applications, and granted certificates of convenience and necessity to the railroad, subject however to the following conditions:

"(1) The service by motor vehicle to be performed by applicants shall be limited to service which is aux-

iliary to or supplemental of the service of the Seaboard Air Line Railway.

"(2) Applicants shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway.

"(3) Shipments transported by applicants by motor vehicle shall be limited to those which move under a through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail.

"(4) Such further specific conditions, as we in the future may find it necessary to impose in order to restrict applicants' operations by motor vehicle to service which is auxiliary to or supplemental to the rail service of the Seaboard Air Line Railway."

In overruling the Joint Boards and in granting the certificates, Division 5 reaffirmed its order of February 16, 1938 (Exhibit "F") denying protestants' petitions for consolidated hearing and further hearing, the Commission found:

1. "While the evidence indicates that in most instances there is adequate motor-carrier service over the considered routes it is also clear that applicant's proposed service will expedite deliveries of less than carload shipments which now move by railroad. The proposed operations should result in improved service with respect to merchandise, as well as carload traffic, and the [fol. 17] record indicates that applicants will be able to effect some economies through elimination of train stops and reductions of the number of cars in their trains."

2. "There seems little question as to the proposed railroad-truck co-ordinated service being in the public interest nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers."

(For full report see Exhibit "L.")

The foregoing quotations from the decision of Division 5 constitute the only findings contained in the entire report. The balance of the report (Exhibit "L") consists of a

recitation of the applications and the contentions of the parties. The Commission did not find that the proposed operations would not be injurious to protestants, however the Commission made a negative finding:

"* * * nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers."

The action of Division 5 in overruling the Joint Boards and in granting the certificates without a consolidated hearing was arbitrary and capricious, and the negative finding was arbitrary and capricious in that such negative finding was only possible by reason of the fact that the rulings of the Commission, denying a consolidated hearing and the refusal to hear protestants' evidence, deprived protestants of a fair hearing and deprived the Commission of a record upon which contrary affirmative findings might have been made.

The action of Division 5, in finding that there already existed "adequate" motor carrier service, and then finding that the railroad applicant had established public convenience and necessity, was arbitrary and capricious and exceeded the power of the Commission in that the Commission arbitrarily substituted railroad convenience for public convenience.

X

(a) Following various petitions for reconsideration by the full Commission and upon oral argument before the full Commission, but without further hearing or the receipt [fol. 18] of further evidence, the full Commission reversed the order of Division 5 (Exhibit "L") and by order dated January 24, 1941, reported in 28 M. C. C. 5 (Exhibit "M"), abolished Condition No. 3, providing for a prior or subsequent movement by rail, and imposed a series of so-called key point restrictions, which in effect provided that through operations by truck might not be conducted through or beyond more than one "key point."

The full Commission designated the key point restrictions on the consolidated operations represented by the several applications of the railway without a record covering such matters. Upon the filing, by the railway, of a petition for modification of the key point restrictions prescribed

by the full Commission, the Commission ordered the proceedings reopened for further hearing. The order for further hearing was dated July 25, 1941, and is attached hereto and identified as Exhibit "N."

(b) On October 3, 1941, the Commission assigned the reopened proceedings for hearing on November 12, 1941, subject to the following limitation on the scope of the hearing:

> "The above-entitled matters are hereby assigned for further hearing solely to determine whether Condition 3 as set forth in the prior report, 28 M. C. C. 5 should be modified, and if so, the extent of such modification * * *." See Exhibit "O."

The order of October 3, 1941 (Exhibit "O"), assigned the reopened proceedings for hearing before an examiner of the Commission, as distinguished from a Joint Board; and said reopened proceedings, consolidated for the first time Docket MC-86687 and MC-86687 Subs. 1 to 10, 15, 18 and 19.

The action of the full Commission in limiting the scope of the consolidated and reopened proceedings, to the matter of modification of "key points" was arbitrary and capricious and denied protestants a fair and reasonable hearing in that this was the first and only consolidated hearing at which any of the issues repeatedly raised by plaintiffs could have been presented. In finally recognizing that the several applications should be consolidated and heard by the Commission on a consolidated record, the Commission did what protestants had been trying to get it to do for five years, however the limitations put on the scope of the issues were arbitrary and capricious and perpetuated the errors of the prior Joint Board hearings and denied protestants a fair and reasonable hearing.

XI

[fol. 19] After the Commission had consolidated the dockets and reopened the hearing, the United States Department of Justice filed, on October 27, 1941, a petition for intervention, and said petition was granted by the Commission by order dated October 28, 1941.

The petition of the Department of Justice, Anti-Trust Division, under date of October 27, 1941, by Thurman Arnold, was in part as follows:

> "This Division is advised that railroad companies seeking through ownership and direct operation of

truck lines and through operation jointly between railroads of the Railway Express Agency, to bring about a monopoly and strangulation of the independent trucking industry. This, it is contended, will result if railroads are permitted to enter the motor carrier field without restriction because the large resources of the railroads, including railroad stations, employes, soliciting forces, and their ability to cut rates and absorb losses, would give independent motor carriers little chance to survive.

"This issue is, I am informed, involved in the application of the Seaboard Air Line Railway, set for hearing November 12, 1941, at Raleigh, North Carolina. I would like to request that representatives of the Antitrust Division be given the privilege of intervening before your Commission in this case."

At the reopened and consolidated proceedings, the hearings on which were held at Raleigh, North Carolina on November 12 and 13, 1941, the United States Department of Justice, American Trucking Associations, Southern Motor Carriers' Rate Conference and various individual motor carriers appeared and participated in the proceedings.

The consolidated proceedings involved applications covering approximately 1337 miles of highway routes in five states.

The examiner refused to permit protestants and interveners to introduce evidence or require applicant to produce evidence on the following subjects.

1. Less-carload traffic.

2. Offers of motor carriers to establish joint rates and routes.

3. Rates to be charged.

4. Profitableness of the proposed operations.

5. Tonnage involved.

6. Cost of operations.

[fol. 20] 7. Segregation of rail and motor operations.

8. Segregation of interstate and intrastate traffic.

9. Use of railroad facilities and employes.

10. Alternative certificate conditions.

11. Co-ordination of service with independent motor carriers.

12. Competition and monopoly.

Upon the refusal of the examiner to permit protestants to examine applicants' witnesses with respect to traffic and revenues involved in the proposed operations and the diversion of traffic from existing motor carriers, and upon refusal of the examiner to permit protestants' witnesses to testify regarding these subjects, protestants made an offer of proof and further requested the continuation of the hearing in order to give protestants an opportunity to prepare and develop testimony to meet the issues raised by applicants' witnesses and concerning the conduct of the proposed operations, and to show the manner in which protestants would be injured by such operations. Protestants requested that the hearing be held open until the Commission could rule on the exceptions taken to the examiner's rulings and further requested that the hearing be held open for a period of 60 days to enable protestants to further develop and present evidence to show the injurious effect on them of the proposed operations, as disclosed by the applicant. All of these motions were denied by the examiner.

Upon the refusal of the examiner to permit inqury or testimoney respecting the foregoing subjects the Department of Justice and the American Trucking Association and individual carrier protestants put these rulings in issue and filed petitions with the Commission requesting further proceedings and the admission and production of evidence. Said petitions were dated December 5, 1941, and are attached hereto and identified as Exhibits "P" and "Q."

On January 21, 1942, the Commission arbitrarily and capriciously denied, without a hearing, the petitions of the American Trucking Associations and the Department of Justice for a further hearing, admission of evidence and production of evidence. Said order is attached hereto and identified as Exhibit "R."

On July 6, 1942, the full Commission issued its report and order on the further hearing, which hearing was limited [fol. 21] to the issue of modification of key points, and

said report and order is attached hereto, identified as Exhibit "S" and is reported in 34 M. C. C. 441.

The order of July 6, 1942 eliminated the conditions prescribed by Division 5 in its order of July 11, 1939, reported in 17 M. C. C. 413 (Exhibit "L") which provides for a prior or subsequent movement by railroad, and modified the key point restrictions prescribed by the full Commission on January 24, 1941—28 M. C. C. 5—Exhibit "M." In the report of July 6, 1942, the full Commission found:

> "At the hearing numerous motions were made by protestants and intervenors but they need not be considered here. They were renewed by petitions, following the close of the hearing, asking for reopening and rehearing of the proceedings and admission and production of further evidence. They were denied by our order of January 21, 1942."
>
> . . . . . .
>
> "The modifications requested will in no way change the character of the service applicants are authorized to perform as a motor carrier; nor will they adversely effect the operations of existing motor carriers, nor restrain competition in the motor carrier field."

The action of the full Commission in consolidating the application and holding a consolidated hearing for the sole purpose of enabling the applicant railroad to show that key point restrictions should be modified with reference to the consolidated applications and at the same time denying protestants an opportunity to show the competitive effect of the consolidated operations and the removal or modification of key point restrictions was arbitrary and capricious and denied protestants a fair and reasonable hearing.

The purported findings that the proposed operations would not "adversely affect the operations of existing motor carriers, nor restrain competition in the motor carrier field" is arbitrary and capricious and wholly without support for the reasons that the Commission consistently and repeatedly refused to hear the applications jointly and in a manner which would permit protestants to offer evidence relating to injury; and when the Commission finally heard the cases on a consolidated record, it refused to receive evidence and to require the production of evidence.

[fol. 22] XII

The Commission, by Division 5, by order dated July 11, 1939, Exhibit "L," reported in 17 M. C. C. 413, authorizing a certificate to the railroad applicant, conditioned its order as follows:

> "Upon compliance by applicants with Sections 215 and 217 of the act and our rules and regulations thereunder * * *."

Section 215 covers insurance requirements, and Section 217 covers tariffs of common carriers by motor vehicle.

The full Commission, through its orders dated January 24, 1941, Exhibit "M," reported in 28 M. C. C. 5, repeated the requirement for compliance with Sections 215 and 217. However, the order of the full Commission under date of July 6, 1942, Exhibit "S," reported in 34 M. C. C. 441, omitted the requirement for compliance with the provisions of Section 217, covering the publication of motor carrier tariffs.

The Commission arbitrarily and capriciously failed and refused to require the railroad applicant to comply with the provisions of Section 217 of the Interstate Commerce Act relative to the filing and publication of motor carrier tariffs, and permitted said railroad applicant to conduct motor carrier operations under its railroad tariffs, and has thereby subjected plaintiffs to unfair, unreasonable and discriminatory competition in that the railroads and regulations of the Commission subject independent motor carriers to many restrictions respecting the reasonableness of rates and the publication of quantity rates, which the Commission does not apply in the case of tariffs published by railroads.

XIII

The Commission by its orders of July 11, 1939 (Exhibit "L"), January 24, 1941 (Exhibit "M"), July 6, 1942 (Exhibit "S") and November 11, 1942 (Exhibit "T"), arbitrarily and capriciously failed and refused to require the railroad applicant to keep separate motor carrier accounts and to make motor carrier reports, in accordance with the provisions of Section 220 of the Interstate Commerce Act, and thereby subjected plaintiffs to unfair, unreasonable and discriminatory competition in that the losses on the motor-

carrier operations of the railroad applicant are obscured and hidden in the mass of revenues and expenses of the operations of the railroad as a whole.

[fol. 23] XIV

Injury to Plaintiffs

By reason of the Commission having misconceived the law and its duties, having arbitrarily and capriciously issued various orders as aforesaid, and having denied plaintiffs a reasonable and fair hearing, plaintiffs have been and will continue to be irreparably injured and damaged in that:

1. The operating ratio of plaintiffs is such that the issuance of unnecessary motor carrier certificates to the railroad competitor will result in diversion of traffic, the impairment of the economic stability of the independent motor carriers, prevent them from rendering adequate and continuous public service, and destroy their investments in their business.

2. Failure and refusal of the Commission to apply fair and equal rate making and accounting regulations to motor carrier operations conducted by railroads, similar to those regulations applicable to operations conducted by independent motor carriers, does and will continue to subject plaintiffs to unfair, unreasonable discriminatory and destructive competitive practices and will result in the diversion of traffic and the impairment of the economic stability of the independent motor carriers, prevent them from rendering adequate and continuous public service, and destroy their investments in their business.

3. The issuance of unnecessary motor carrier certificates and the failure and refusal of the Commission to apply fair and equal rate making and accounting regulations to motor carrier operations conducted by railroads, similar to those regulations applicable to operations conducted by independent motor carriers, does and will continue to subject plaintiffs to unfair, unreasonable discriminatory and destructive competitive practices and will result in the diversion of traffic and the impairment of the economic stability of the independent motor carriers, prevent them from rendering adequate and continuous public service, destroy their investments in their business and result in the creation of a transportation monopoly in the hands of the railroad applicant.

Prayers

Wherefore, the premises considered, plaintiffs, and each of them, pray that:

1. This Court issue its subpoena requiring defendants, [fol. 24] each of them, to appear and answer this bill of complaint, but not under oath; answer under oath being hereby expressly waived.

2. Vacate and set aside the orders of the Commission entered in Dockets M. C. 86687 and M. C. 86687 Subs 1 to 10, 15, 18 and 19 under dates of July 11, 1931, 17 M. C. C. 413; January 24, 1941, 28 M. C. C. 5; July 6, 1942, 34 M. C. C. 441 and November 30, 1942.

3. That the matters herein complained of be remanded to the Interstate Commerce Commission for further proceedings in accord with the opinions of this Court and specifically to:

(A) Reopen and set for further hearing Dockets M. C. 86687 and Sub Dockets 1 to 10, inclusive, and 15, 18 and 19.

(B) Hearing consider plaintiffs' evidence bearing on the service and facilities which plaintiffs are authorized to render in the territory and over the routes covered by the certificate issued in Dockets M. C. 86687 and Subs 1 to 10, inclusive, 15, 18 and 19.

(C) To hear and consider plaintiffs' evidence with respect to their operating ratio, economic stability and ability to withstand additional competition.

(D) To hear and consider the ability and willingness of plaintiffs to enter into joint arrangements with the railroad with respect to performing the service which the railroad proposes to perform under its several applications.

(E) Direct the Commission to require applicant, Seaboard Air Line Railway, by its receivers, to produce the evidence called for in the petitions of the American Trucking Associations and the Department of Justice under date of December 5, 1941.

(F) Determine the issue of public convenience and necessity by the same standards of proof as are required by motor carriers which are not owned by railroads and with due

regard for the issues of monopoly and restraint of competition.

(G) Direct the Commission to condition any certificate or certificates issued to the railroad applicant under the dockets as aforesaid, subject to the same rules and regulations governing rate and classification tariffs, accounts, records and reports as may now or from time to time be made applicable to independent motor carrier operations.

[fols. 25-27] 4. That the Court retain jurisdiction of this cause for the purpose of entering such further orders as may be necessary and for such other and further relief as to it may seem just and proper.

American Trucking Associations, Inc., Southern Motor Carriers' Rate Conference, Flamingo Truck Lines, Inc., Hunt Truck Lines, Great Southern Trucking Co., Central Truck Lines, Inc., K & L Transportation Company, Inc., St. Johns River Line Company, by Samuel W. Shelton, Attorney for Plaintiffs, Insurance Building, Richmond, Va.

J. Ninian Beall Investment Building, Washington, D. C.
Roland Rice, 1424 16th Street, N. W., Washington, D. C.
Edgar Watkins, Jr., 873 Spring Street, Atlanta, Ga. Of Counsel.

[fol. 28]

Form B. M. C. 8

EXHIBIT A-1

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY—PROPERTY

(This form is to be used by applicants who propose, as common carriers of property, (1) to continue an operation, or the extension of an operation, in interstate or foreign commerce instituted between June 1, 1935, and October 15, 1935, inclusive; (2) to institute an operation in interstate or foreign commerce at any time subsequent to October 15, 1935; or (3) to extend an operation for which a separate application has been filed with or certificate issued by the Interstate Commerce Commission under the Motor Carrier Act, 1935.)

(Before answering, read General Instructions on last page. Numbers under line refer to Special Instructions on that page.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Application of Legh R. Powell, Jr., & Henry W. Anderson, Receivers of Seaboard Air Line Railway, for a Certificate of Public Convenience and Necessity authorizing common carrier service in the transportation of property in interstate or foreign commerce under the Motor Carrier Act, 1935.	DOCKET No. 86687. Sub. No. 4.

APPLICATION

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, D. C.

Applicant States:

I. That full and correct name of applicant is Legh R. Powell, Jr., & Henry W. Anderson, Receivers of Seaboard Air Line Railway. Business address, S. A. L. Ry. Bldg., Norfolk (County), Virginia.

II. The applicant is Receivers of Seaboard Air Line Railway, doing business or proposing to do business under the trade name or style of Legh R. Powell, Jr., & Henry W. Anderson, Receivers of Seaboard Air Line Railway, and that information respecting applicant is set forth in Exhibit A, attached hereto and made a part hereof.

III. That applicant herein applies for authority (1) to continue an operation ....., or the extention of an operation .....
(Check) (Check)
as a common carrier of property in interstate or foreign commerce, which operation or extension was instituted between June 1, 1935, and October 15, 1935, inclusive; (2) to institute such an operation at a time subsequent to October 15, 1935 .....; or (3) to
(Check)
extend an operation for which a separate application has been filed with or certificate issued by the Interstate Commerce Commission under the Motor Carrier Act, 1935 .....; and
(Check)
that a description of the operation or extension for which authority is sought herein and of the class or classes of property transported or to be transported, is set forth in detail in Exhibit D, attached hereto and made a part hereof.

VI. That applicant sets forth, in Exhibit C, attached hereto and made a part hereof, the facts and circumstances upon which applicant relies to establish that the public convenience and necessity require or will require the service for which application is herein made.

[fol. 29]

V. That applicant sets forth in Exhibit D, attached hereto and made a part hereof, facts and circumstances to show that applicant is fit, willing, and able properly to perform the service for which application is herein made and to conform to the provisions of the Motor Carrier Act, 1935, and the requirements, rules, and regulations of the Commission thereunder.

VI. That applicant has complied with the order of the Commission relative to the service of this application and of notice of the filing thereof on interested parties, as shown in Exhibit E, attached hereto and made a part hereof.

VII. That applicant will submit such additional information in support of this application as the Commission may require.

WHEREFORE, The applicant prays: That the Commission issue a Certificate of Public Convenience and Necessity authorizing applicant to engage in, or continue, the transportation of commodities generally in interstate or foreign commerce, over the route or routes or within the territory herein described.

Dated this 7th day of January, 1937.

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

BY W. L. STANLEY,
Chief Public Relations Officer.

OATH

STATE OF GEORGIA
COUNTY OF FULTON } ss:

W. L. Stanley, makes oath and says that he is the Chief Public Relations Officer for Receivers of the Seaboard Air Line Railway; that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has a knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

W. L. STANLEY.

Subscribed and sworn to before me, a notary public in and for the State and County above name this 7th day of January, 1937.

[SEAL]

C. L. CHAPPELL,
Notary Public, State at Large, Atlanta, Ga.

My commission expires February 2, 1940.

Form B. M. C. 8

(*Exhibit A*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

ORGANIZATION INFORMATION

1. If applicant is a *corporation*, furnish the following information:
   (*a*) Date ..... and State ..... of incorporation.
   (*b*) Names and business addresses of directors:

Name	*State, City, and Street Address*
.....	.....

   (*c*) Names and business addresses of officers:

[fol. 30]

Name	*State, City, and Street Address*	*Office Held*
.....	.....	.....

(*d*) Names and business addresses of ten principal stockholders and their respective holdings:

Name	*State, City, and Street Address*	*Extent of Interest* (2)
.....	.....	.....

(*e*) Attach to the original only, of this application and identify as Statement A-1-*e*, a copy of articles of incorporation and by-laws, with all amendments, certified to by a proper officer of applicant.

2. If applicant is a *partnership*, furnish the following information:

(*a*) Date ..... and State or State and county ..... in which partnership was formed.

(*b*) Names and business addresses of all present partners, including limited or silent partners, and their respective interests:

Name	*State, City, and Street Address*	*Proportion of Interest*
.....	.....	.....

(*c*) Attach to the original, only, of this application and identify as Statement A-2-*c*, a properly authenticated copy of the articles of partnership, if any.

3. If applicant is an *association or any other form of organization except a corporation or partnership*, furnish the following information:

(*a*) Date ..... and place ..... of organization.

(*b*) A full description of the nature and objects of the organization .....

(*c*) Names and business addresses of officers, directors, or trustees:

Name	*State, City, and Street Address*	*Office Held*
.....	.....	.....

Form B. M. C.-8

(*Exhibit A—Concluded*)

(*d*) Names and business addresses of ten principal shareholders or other parties having a beneficial interest, of whatever kind, in applicant:

Name	*State, City, and Street Address*	*Extent of Interest* (2)
.....	.....	.....

(*e*) Attach to the original, only, of this application and identify as Statement A-3-*e*, a properly authenticated copy of articles of association, trust agreement, or other documents evidencing the organization of applicant.

4. If applicant is *a trustee, receiver, assignee, executor, or administrator*, furnish the following information:

(*a*) Name and address of court under the direction of which applicant is acting: District Court of United States for Eastern District of Virginia, Norfolk, Virginia, (Court of primary jurisdiction), and District Court of United States for Southern District of Florida,

[fol. 31] Tampa, Florida, (Court of ancillary jurisdiction.)

(*b*) Nature of proceedings in which applicant was appointed. See Statement A-4-*b* attached.

(*c*) Name and business address of the real party in interest in the proceedings described in (*b*) Seaboard Air Line Railway Company, S A L Ry. Bldg., Norfolk, Virginia, its mortgage trustee, security holders and general creditors.

(*d*) If the real party in interest is other than an individual, supply the information requested in (1), (2), or (3) above, whichever is applicable. Such information may be supplied in the spaces provided above or in a separate statement, identified as Statement A-4-*d*. See Statement A-4-d attached.

5. (*a*) If applicant or the real party in interest, or any of its officers, directors, ten principal stockholders, shareholders, or beneficial owners are officers, directors, stockholders, shareholders, or beneficial owners of any other motor carrier, furnish the following information:

Name and Address of Carrier in Which Office or Interest is Held	*By Whom Office or Interest is Held*	*Relation of Such Person to Applicant or Real Party in Interest*	*Office or Extent and Character of Interest Held* (3)

(*b*) If applicant, or the real party in interest, is part of a system or group of companies which includes other motor carriers, indicate the relation of applicant to the members of such system or group including the extent of control exercised over applicant and the control, if any, which applicant exercises over others: Applicants operate in own name certain other motor service but do not control or have an interest in any independent motor carrier.

(*c*) If applicant, or the real party in interest, is engaged in any other form of transportation or in the business of warehousing, transportation brokerage, or any other similar activity which is a part of or connected with transportation, or holds any interest in any individual, partnership, corporation, or other organization so engaged, indicate the character of the business and applicant's relation thereto and interest therein. Applicants as Receivers of Seaboard Air Line Railway are engaged in the business of common carrier by rail of passengers and freight.

Form B. M. C. 8

(*Exhibit B*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

DESCRIPTION OF OPERATIONS

1. Describe the operations covered by this application as follows:

(*a*) *Operations over a regular route or routes and between fixed termini:*

(1) Between Hamlet, N. C. and Raleigh, N. C., as follows:

(i) From Hamlet, N. C., to Marston, N. C., via Highway NC 77.

(ii) From Marston, N. C., to Sanford, N. C., via Highway US 1.

(iii) From Sanford, N. C., to Pittsboro, N. C., via Highways US 1-501.

(iv) From Pittsboro, N. C., to Apex, N. C., via Highways US 64-NC 55.

[fol. 32]

(v) From Apex, N. C., to Raleigh, N. C., via Highway US 1. Return trip over same route.

Show also, *for each route separately:*

(2) The intermediate and off-route points served or proposed to be served by applicant in connection with transportation in interstate or foreign commerce. See Statement B-1-(a)-4) attached.

(3) The class or classes of property transported or proposed to be transported by applicant in interstate or foreign commerce, whether (a) commodities generally, with certain exceptions, Commodities Generally, or (b) special commodities.

(4) The present or proposed time schedule (attach copy and identify as Statement B-1-(a)-4).

(5) The extent, if any, to which operations covered by this application are or will be seasonal and the months of the normal operating season. Not Seasonal.

(6) The present or proposed interchange arrangements: (See attached Exhibit.)

(7) If application covers existing operations, date on which operations were instituted: .....

(8) If such operations were instituted by someone other than applicant, show by whom instituted and manner and date of applicant's acquisition of such operations. File copy of sales agreement, court order, articles of consolidation or merger or other evidence of applicant's acquisition of such operations. Identify as Statement B-1-(a)-8 .....

(9) If any of the operations covered by this application are conducted or are proposed to be conducted by applicant under lease or operating agreement with another, or are conducted by another under lease or operating agreement with applicant, give name and address of such other party .....
(Attach copy of such lease or agreement, identified as Statement B-1-(a)-9.) Also state whether authority to lease or contract to operate has been applied for under section 213, Motor Carrier Act, 1935 .....
(Yes or No)

(b) *Operations solely within municipal areas:*

If operations covered by this application are conducted or are proposed to be conducted solely within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, indicate the area within which such operations are conducted or proposed to be conducted and set forth all information requested in (a) (3), (5), (6), (7), (8), and (9) above.

Form B. M. C. 8

(*Exhibit B—Concluded*)

(c) *Operations other than over regular routes and between fixed termini or within municipal areas:*

(1) Location of applicant's headquarters .....

(2) Place or places at which or the territory within which applicant obtains, or proposes to obtain, the main volume of its traffic. (Indicate clearly.)

.....

[fol. 33] (3) Place or places to which or territory within which applicant transports, or proposes to transport, such traffic. (Indicate clearly.)

.....

(4) The class or classes of property transported or proposed to be transported by applicant in interstate or foreign commerce, whether (*a*) commodities generally, with certain exceptions, ...
or (*b*) special commodities .....

(5) If the answers to the preceding questions do not adequately and accurately describe the operations covered by this application, describe such operations clearly and in detail .....

(6) Furnish, in addition to the foregoing, a map clearly showing territory served as to be served. Identify as Map B-1-(*c*)-(6).

(7) Answer (*a*) (5), (6), (7), (8), and (9), so far as applicable, in an attached statement, identified as Statement B-1-(*c*)-(7).

(*d*) *Motor vehicle equipment and other facilities:*

(1) The motor vehicle equipment used or proposed to be used by applicant in the operations covered by this application is as follows: Equipment meeting all legal requirements will be purchased when and if certificate is granted.

(2) If any of the equipment set forth in (1) above is not or will not be owned by applicant, give the information indicated below:

(*e*) *Description and location of other property*, except office equipment, used or proposed to be used in the performance of the transportation service covered by this application, such as dock and terminal facilities, garages, machine shops, etc. Present terminal facilities and shops of applicants.

2. If applicant holds a certificate of public convenience and necessity or a permit from the Interstate Commerce Commission or has applied for such a certificate or permit on Form B. M. C. 1, give the certificate or permit number, or the docket number of a pending application, and set forth any facts required to show the relation between the operations covered by such certificate, permit, or application and those covered by the present application.

.....

Form B. M. C. 8

(*Exhibit C*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

PUBLIC CONVENIENCE AND NECESSITY

Set forth the facts and circumstances upon which applicant relies to establish that the service covered by this application is or will be required by the present or future public convenience and necessity, including:

1. The names and addresses of all motor carriers and all carriers by rail and water, known to applicant, with whose service the operations described in this application are or will be directly competitive.

2. The reasons, briefly and clearly stated, why the transportation service covered by this application is or will be required by the present or future public convenience and necessity.

1. Helms Motor Express, Albemarle, N. C.
Motor Transit Co., Raleigh, N. C.

[fol. 34]

Norfolk Southern RR, Norfolk, Va.
Southern Railway, Washington, D. C.

2. The rail lines in territory sought to be served are the only transportation facility which can render a coordinated rail and highway service as proposed, between points located on the railroads involved. Such motor carrier service, if authorized, will (a) expedite the movement of freight, and (b) reduce the cost of rail operation to the extent that it is now necessary to operate trains for the handling of small quantities of less than carload freight.

(*Exhibit D*)

QUALIFICATIONS OF APPLICANT

State the facts and circumstances upon which applicant relies to show that applicant is fit, willing, and able properly to perform the service for which application is herein made and to conform to the provisions of the Motor Carrier Act, 1935, and the requirements, rules, and regulations of the Commission hereunder, including:

1. A detailed statement of applicant's assets and liabilities on the date of this application. (Attach and identify as Statement D-1.)
2. If applicant has been engaged in motor carrier operations prior to the date of this application, furnish, if available, an income and profit and loss statement for the year or 6 months immediately preceding such date, or the period of applicant's operations, if less than 6 months. (Attach and identify as Statement D-2.)
3. A statement containing a brief description of the experience of the principal officers and operating personnel of applicant's present or proposed organization. (Attach and identify as Statement D-3.)
4. Any other facts relevant to the ability of applicant properly to perform the service covered by this application; All data required under Exhibit D are contained in reports made to the Interstate Commerce Commission by Applicants.

(*Exhibit E*)

CERTIFICATE OF SERVICE

I, W. L. Stanley, Chief Public Relations Officer, of the applicant, do hereby certify that upon the 7th day of January, 1937, I served the foregoing application upon the Boards, Commissions, or officials (or the Governor where there is no Board, Commission, or official) of the State of North Carolina, in which State applicant operates or proposes to operate, by delivering in person or by registered mail, a true, correct, and complete copy of this application to each thereof at the following addresses: North Carolina Utilities Commission, Raleigh, N. C.

W. L. STANLEY.

I further certify that I served a notice of the filing of this application, as required by Form B. M. C. 15, by delivering in person or by registered mail a copy thereof to each of the carriers named in answer to Item 1 of Exhibit C of this application.

W. L. STANLEY.

(*Statement R-1-(a)-4*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

Proposed Motor Carrier Schedule between Hamlet, N. C. and Raleigh, N. C.
(To be operated daily)

2:00 AM	Lv. Hamlet, N. C.	Ar.	1:45 PM
2:15	Cognac		1:30
2:25	Morston		1:20
2:35	Hoffman		1:10
2:55	Addor		12:50

[fol. 35]

3:10		Aberdeen	12:35
3:20		Southern Pines	12:25
3:35		Niagara	12:10
3:55		Vass	11:55
4:15		Cameron	11:35
4:35		Lemon Springs	11:15
5:00		Sanford	10:55
...		Colon	10:40
5:40		Pittsboro	10:00
6:30		Apex	9:05
6:45		Cary	8:50
7:30 AM	Ar.	Raleigh, N. C.	Lv. 8:30 AM

Note: Will not go into Colon on Northward trip.

(*Exhibit B-1-(6)*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

(6) The present or proposed interchange arrangements:

Points of interchange	Names and addresses of carriers with which traffic is or is to be interchanged.	Interchange Arrangements: Physical handling (6)	Rates (7)
Aberdeen, N. C.	Norfolk Southern RR, Norfolk, Va.	To and from Railroad depots	Joint
	Aberdeen & Rockfish RR, Aberdeen, N. C.		
Cameron, N. C.	Moore Central Ry., Asheboro, N. C.	"	"
Sanford, N. C.	Atlantic & Yadkin Ry., Greensboro, N. C.	"	"
	Atlantic & Western Ry., Sanford, N. C.	"	"
	Atlantic Coast Line RR, Wilmington, N. C.	"	"
Colon, N. C.	Norfolk Southern RR, Norfolk, Va.	"	"
Apex, N. C.	Durham & Southern RR, Durham, N. C.	"	"
Cary, N. C.	Southern Railway, Washington, D. C.	"	"
Raleigh, N. C.	Southern Railway, Washington, D. C.	"	"
	Norfolk, Southern RR, Norfolk, Va.	"	"

Proposed motor carrier service is to be in connection with and supplementary to rail service rendered by applicants. Proposed route practically parallels the rail lines of applicants, and interchange will be made with common carriers by rail where such interchange is now being made.

[fol. 36] EXHIBIT A-2

Docket MC-86687

Gaston-Garnett, S. C.
February 22, 1937 —Application filed.
June 11, 1937 —Heard by Joint Board No. 177.
November 16, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 1

McBee-Sumpter, S. C.
February 23, 1937 —Application filed.
June 11, 1937 —Heard by Joint Board No. 177.
November 16, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 2

Henderson-Raleigh, N. C.
February 23, 1937 —Application filed.
June 15, 1937 —Heard by Joint Board No. 103.
November 27, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 3

Hamlet, N. C.-Columbia, S. C.
February 23, 1937 —Application filed.
June 11, 1937 —Heard by Joint Board No. 2.
November 16, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 4

Hamlet-Raleigh, N. C.

[fol. 37]

February 23, 1937 —Application filed.
June 15, 1937 —Heard by Joint Board No. 103.
November 27, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 5

Hamlet-Wilmington, N. C.
February 23, 1937 —Application filed.
June 15, 1937 —Heard by Joint Board No. 103.
November 27, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 6

Monroe-Rutherfordton, N. C.
February 23, 1937 —Application filed.
June 15, 1937 —Heard by Joint Board No. 103.
November 27, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 7

Richmond, Va.-Henderson, N. C.
February 23, 1937 —Application filed.
June 14, 1937 —Heard by Joint Board No. 7.
November 16, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 8

Greenwood-Great Fall, S. C.
May 26, 1937 —Application filed.
October 27, 1937 —Heard by Joint Board No. 177.

[fol. 38]

January 8, 1938 —Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 9

Jacksonville-Live Oak, Fla.
August 9, 1937 —Application filed.
October 19, 1937 —Heard by Joint Board No. 205.
February 18, 1938 —Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 10

Live Oak-River Junction, Fla.
August 9, 1937 —Application filed.
October 19, 1937 —Heard by Joint Board No. 205.
February 18, 1938 —Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 15

Monroe-Waxhaw, N. C.
August 30, 1937 —Application filed.
March 14, 1938 —Heard by Joint Board No. 205.
March 26, 1938 —Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 18

Jacksonville-Fernandina, Fla.
February 21, 1938 —Application filed.
June 22, 1938 —Heard by Joint Board No. 205.
November 15, 1938—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.

(Here Follows 1 Photolithograph, Side Folio 39)

[fol. 40]

July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 19

Tampa-Sebring, Fla.
August 15, 1938 —Application filed.
January 23, 1939 —Heard by Joint Board No. 205.
April 12, 1939 —Joint Board report.
February 17, 1940 —Division 5 report.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Exhibit B-1

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 13th day of May, A. D. 1937.

No. MC-86687
Sub. No. 3

In the matter of the application of Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation, of S. A. L. Ry. Bldg., Norfolk, Va., for a certificate of public convenience and necessity, Form B. M. C. 8, Sub. No. 3, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the States of North Carolina and South Carolina, between Hamlet, N. C., and Columbia, S. C.

A more detailed statement of route or routes (or territory) is contained in said application, copies of which are on file and may be inspected at the office of the Interstate Commerce Commission, Washington, D. C., or offices of the boards, commissions or officials of the States involved in this application.

It appearing, That the above-entitled matter is one which the Commission is required by the Motor Carrier Act, 1935, to refer to a joint board:

And it further appearing, That the joint board named below is the proper board to which said matter should be referred:

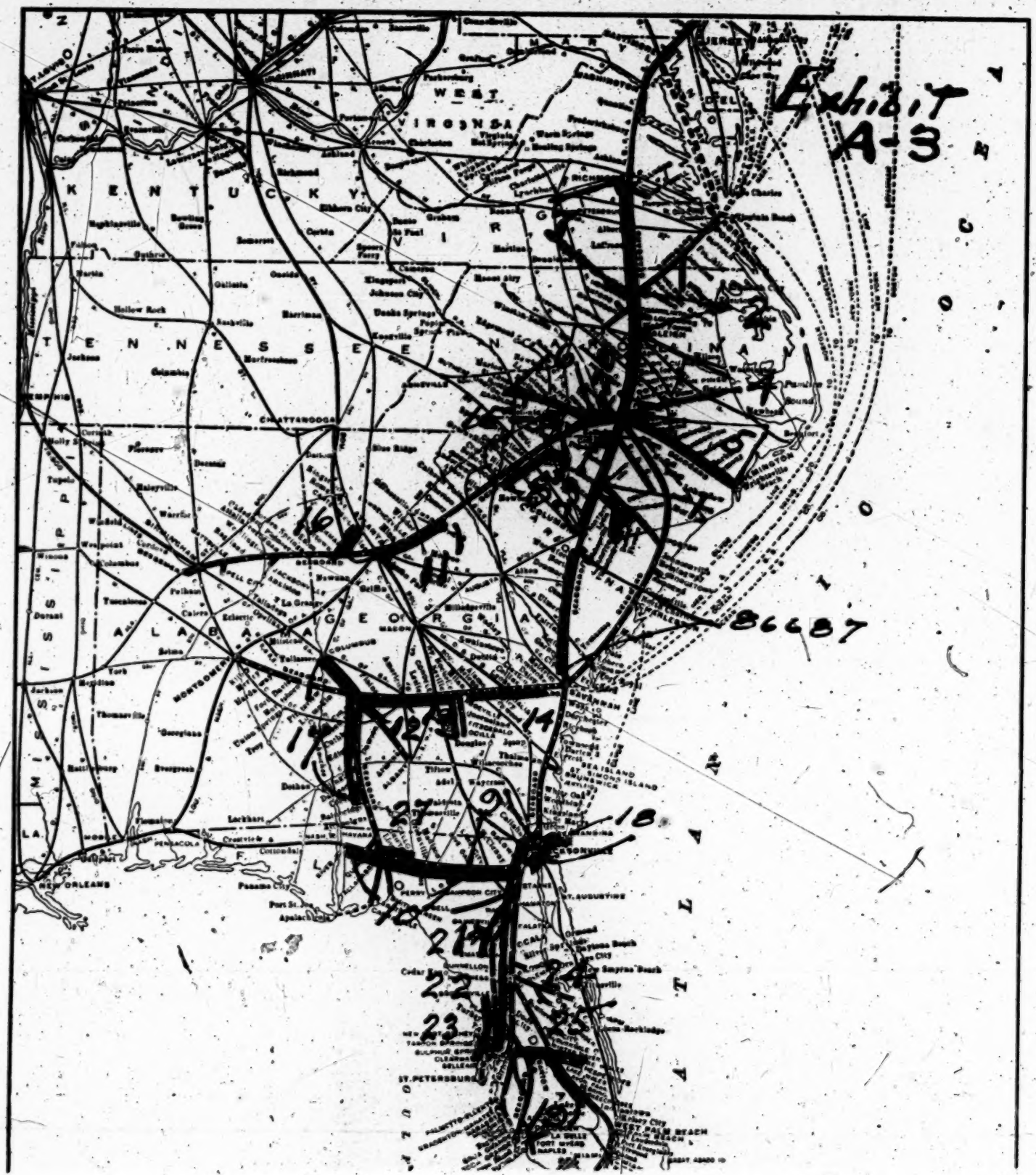
Exhibit A-3
86687
KENTUCKY
TENNESSEE
ALABAMA
GEORGIA
WEST VIRGINIA
CHATTANOOGA
NEW ORLEANS
ST. PETERSBURG
WEST PALM BEACH
ATLANTIC OCEAN
16
11
14
18
22
23

It is ordered, That the above-entitled matter be, and it is hereby, referred to Joint Board No. 2 for hearing on the 11th day of June, A. D. 1937, at 9 o'clock A. M. (standard time), at the rooms of the South Carolina Public Service [fol. 41] Commission, Columbia, S. C., and for recommendation of an appropriate order thereon accompanied by the reasons therefor;

It is further ordered, That notice of this proceeding be duly given.

And it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary) shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the date of service hereof and that the date of mailing of this notice shall be considered as the time when said notice is served.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT B-2

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 13th day of May, A. D. 1937.

No. MC-86687
Sub. No. 4

In the matter of the application of Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation of S. A. L. Ry. Bldg., Norfolk, Va., for a certificate of public convenience and necessity, Form B. M. C. 8, Sub. No. 4, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of North Carolina, between Hamlet and Raleigh, N. C.

A more detailed statement of route or routes (or territory) is contained in said application, copies of which are on file and may be inspected at the office of the Interstate

Commerce Commission, Washington, D. C., or offices of the boards, commissions or officials of the States involved in this application.

It appearing, That the above-entitled matter is one which the Commission is required by the Motor Carrier Act, 1935, to refer to a joint board:

And it further appearing, That the joint board named below is the proper board to which said matter should be referred;

It is ordered, That the above-entitled matter be, and it is hereby, referred to Joint Board No. 103 for hearing on the [fol. 42] 15th day of June, A. D. 1937, at 9 o'clock A. M. (standard time), at the rooms of the North Carolina Utilities Commission, Raleigh, N. C., and for recommendation of an appropriate order thereon accompanied by the reasons therefor;

It is further ordered, That notice of this proceeding be duly given.

And it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary) shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the date of service hereof and that the date of mailing of this notice shall be considered as the time when said notice is served.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT B-3

Typical Rulings of Joint Boards re Protestants' Evidence and Motions to Consolidate

MC-86687, Sub. 3
Joint Board No. 2
Hearing June 11, 12, 1937

Joint Board Refused to Consider Relationship Pending Application

"*Mr. Watkins:* I wish to make a motion. Mr. Chairman, the evidence introduced this morning by the ap-

plicants indicates that it is the purpose of the applicants to handle through traffic over all the routes covered by Dockets MC-86687 and sub numbers thereunder. Under Section 205-b of the Motor Carrier Act, such applications should be heard by an examiner, as there are more than three states involved; or, if the Commission construes this section as limited only to motor-carrier operations, then there are three states involved, and the applications should be consolidated and heard by a joint board composed of representatives of the states of Virginia, North Carolina and South Carolina. Thus this hearing is proceeding illegally. I make a motion that all these dockets be consolidated and set for hearing before the proper authority." (R. 70.)

* * * * * * *

"*Chairman Darby:* Mr. Watkins, the Board will take [fol. 43] your motion under consideration but will proceed with the testimony, and we will decide on your motion before a decision is made as to issuing or denying a certificate." (R. 73.)

* * * * * * *

"*Mr. Watkins:* Mr. Chairman, I am not trying to stop the proceeding, as long as we are here; but I do think, in order to accomplish the purpose, there must be a definite ruling on this subject before we close the hearing in this case. May I suggest that we transmit this motion to the Commission immediately and see if it is possible to get a definite ruling?

"*Mr. Self:* No, sir. We will pass on that ourselves. That is our business here.

"*The Chairman:* Then, if you want to appeal from the decision of the Joint Board, you may do it.

"*Mr. Watkins:* I doubt if you have the authority, because there are other cases coming before other joint boards.

"*Mr. Self:* You will have a 30-day opportunity to appear before the Commission. We think there is something in your motion, but we do not want to give a decision now. We want time to consider it." (R. 74.)

* * * * * * *

"*Chairman Darby:* We have gotten to the point where we are hearing another bunch of applications. Let's confine our hearing here entirely to the application that is before us—from Columbia to Hamlet.

"I shall ask Mr. Self to make a statement with reference to Mr. Watkins' motion filed yesterday.

"*Mr. Self:* With reference to Mr. Watkins' motion filed yesterday referring to the consolidation of this and other cases pending before the Interstate Commerce Commission that have been referred to other boards, this Board is No. 177, and we must deny the motion made for the reason that the other cases are not before us. We can not consolidate them. Therefore we will proceed to take the evidence in the case before us and let the folks in Washington consider your motion there, to consolidate, and we will refer to it in any order we issue in this case.

"*Mr. Watkins:* May I make this motion, Mr. Commissioner?

"*Mr. Self:* Yes, sir.

"*Mr. Watkins:* I make a motion that this hearing be adjourned until the Commission has had opportunity to pass upon our motion to consolidate.

"*Chairman Darby:* Mr. Watkins, I am going to deny that motion, upon the grounds that the Board has orders to hear this case for the Interstate Commerce Commission. I think the Commission, before they ordered the Board to hear this case, knew what they were talking about. I think they threshed it out thoroughly before they gave the order. If the Commission see fit to hear the entire group of applications at one time, they can do so. The Commission have gone to the expense [fol. 44] of ordering this hearing, and they have people here. We are going to continue to take the testimony, and if they see fit to deny your motion they will still have the testimony before them.

"I wish to say here, let's confine ourselves to testimony on this application that is before us. We will take care of the other hearings when they come before the Board, and let's confine our remarks solely to the application that is now before us, and not interject testimony about the operation in Virginia, for instance. I did not even know they had an operation or an ap-

plication for operation pending in Virginia until it was brought out here. We have gotten into a wrangle here and have been talking about the operation from Sumter to McBee and from Hamlet to Raleigh, and even from Gaston to Garnett. Let's confine ourselves to testimony on this one proposed application that is now before us.

"*Mr. Watkins:* May I enter my objection to the decision of the Board on all three points: That is, the denial of the motion to consolidate, the motion to adjourn, and the ruling that we must confine our testimony to the application before the Board at the present time?

"*The Chairman:* Note his objections there.

"*Mr. N. A. Turner;* May I say something off the record?

"*The Chairman:* Off the record.

"(Mr. Turner made a statement which was followed by a general discussion, all outside the record.)

"*Chairman Darby:* On the record.

"*Mr. Watkins:* In view of the three rulings of the Joint Board, to which exceptions have been noted, the interveners represented by me do not desire to put in any testimony at this time but insist upon consolidation, and if the cases are consolidated they will put in testimony at that time." (R. 111-114.)

The Railroad Operates in Six States

"Q. * * * you operate in what states besides Virginia, North and South Carolina, Georgia and Florida?

"A. Alabama." (R. 97.)

MC-86687, Sub. 7
Joint Board No. 7
Hearing June 14, 1937

Joint Board Refused to Consider or Admit Testimony Relative to Other Pending Applications

"Q. Would you be willing for your certificates to be so limited as to prevent that?

"*Mr. Abeles:* Now, just a moment. We have repeatedly stated our objections in other proceeding to that

[fol. 45] question, and of course we object to it here. We are considering first of all the isolated proposal here before the Commission. As counsel for the applicants in this case, I will answer the inquiry by saying 'No.' If you phrase your question 'would we have any objections?' my answer, of course, is emphatically yes.

"*The Examiner:* I think that answers your question.

"*Mr. Watkins:* I got it answered. I have just got to get it answered some eight times before the week is out.

"Q. (By Mr. Watkins): Then under the application—by the way are you familiar with the application that you have filed for service between Raleigh and Henderson?

"*Mr. Abeles:* I object to that. He is again going beyond the scope of this case.

"(The question is read.)

"*Mr. Watkins:* I think you should consider that Mr. Terrell has testified that there was a possibility of a shipment moving from a point between Richmond and Henderson to a point between Henderson and Richmond all by motor carrier. I meant to say between Raleigh and Henderson, and between Henderson and Richmond.

"*The Chairman:* Yes, since it was stated this morning that each one of these applications was urged and asked for the independent of any other application that might be pending or that might hereafter be made for motor truck franchises, this Board is of the opinion that only the movements within the territory covered by this application should be considered. If we should go beyond that, it would open wide the case for testimony as to part motor movement and part rail movement from one end of the country to the other, and the only practical way of handling this matter as we see it is to limit it to the movement on the route described in the application.

"*Mr. Watkins:* May I urge in connection with that, that on direct testimony, this applicant has shown movements from other points than are covered by this, partly by rail and partly by motor carrier. Now, it seems that in order to get a complete picture we should also see wherein there was a possibility of moving from other points not involved in this particular application,

all by motor carriers, as we have already seen the possibility of movement by joint rail and truck service.

"*The Chairman:* In doing that, you would tend to create a greater necessity rather than diminish it, wouldn't you?

"*Mr. Watkins:* I suppose so, but at the same time we would also show to this Board the full extent to which these proposed segments of a truck operation would go when put together; and you would get a much clearer picture of the effect on competition by motor carrier than you would by limiting it to this simple inquiry.

"*The Chairman:* As I understand the application by [fol. 46] the Seaboard, there are segments by motor all the way from Richmond to Columbia?

"*Mr. Watkins:* And south of there.

"*The Chairman:* If we would admit others, we would have to consider all. We have not the privilege of doing that because we have only one application before us for one segment. Therefore, we will have to rule out the testimony which tends to show the effect of shipments originating on another proposed segment which has not been passed upon, on the route in question in this application.

"*Mr. Watkins:* I will have to note an exception.

"*The Chairman:* To that ruling the protestant takes an exception." (R. 67-71.)

The Joint Board Disregarded Other Railroad Applications and the Policy of the Railroad

"Q. Is it not true that you have prepared and filed with the ICC, eight applications for truck service paralleling your rail lines?

"*Mr. Abeles:* I object for the same reasons.

"*The Chairman:* The objection is sustained. That part of it alone is not objectionable.

"Q. (By Mr. Watkins): This is a little different situation now. Mr. Stanly, chief Public Relations Officer of this railroad, has testified to the policy of this railroad. I think as long as he testified to that policy it is perfectly correct for me to be allowed to go into and test how far that policy has been carried out.

"*Mr. Abeles:* Only insofar as it applies to this particular operation which is before the Board in this proceeding.

"*Mr. Watkins:* In his direct testimony, he referred generally to truck service at other points on his route. He referred specifically to movements between Raleigh and Wilmington.

"*The Witness:* Not by truck.

"*The Chairman:* He did not testify to any proposed truck service or as to his application for such service between Hamlet and Wilmington. I think we had better confine ourselves, gentlemen, to this case. You can ask him if he proposes any more. That is a matter of record further than that I think we should not go.

"*Mr. Watkins:* That is why I asked if he had eight applications on file.

"*The Chairman:* I will admit that. Objection overruled, and exceptions.

"*Mr. Abeles:* I won't even except to that.

"*Mr. Watkins:* Will you answer that question?

"*The Witness:* We have on file with the ICC now, seven or eight additional applications.

"Q. (By Mr. Watkins): And generally covering what area?

[fol. 47] "*Mr. Abeles:* There is the limit, I think.

"*The Chairman:* Objection sustained.

"*Mr. Watkins:* May I have an exception to that?

"*The Chairman:* Exception.

"Q. (By Mr. Watkins): Did you not advocate the passage of a law in the state of Georgia, which if passed, would have allowed railroads to have inaugurated service paralleling their lines without the issue of convenience and necessity being passed on?

"*Mr. Abeles:* I object to that.

"*The Chairman:* Objection, sustained; exception.

"*Mr. Abeles:* I am objecting to it, not because I have the slightest objection to Mr. Stanly's furnishing that information, but I can't see any possible relevancy to it.

"*The Chairman:* That can't aid us in deciding this case.

"*Mr. Watkins:* I think it will aid in finding out the general policy of this railroad.

"*The Chairman:* I think, gentlemen, the only question before us is whether or not there is public con-

venience and necessity shown for the granting of this franchise."

EXHIBIT C

Night Letter

June 11, 1937.

Bureau of Motor Carriers, Interstate Commerce Commission, Washington, D. C.

Evidence introduced by applicant in MC-86687, Sub. 3, shows that applicant contemplates the institution of through motor carrier service over all routes covered by all the sub. numbered dockets as well as their rail lines. The schedules filed with applications show physical connections and through schedules from Richmond to Georgia line and Wilmington to Rutherfordton.

Intervener, Southern Motor Carriers Rate Conference, moves that all of the cases under MC-86687 and sub numbers be consolidated as under section 205(B), the same must be heard by an examiner as the full operations, truck and rail, involve more than three states and the truck service alone involves three states, Virginia, North Carolina and South Carolina and the hearings before the present Joint Boards are illegal and upon the further ground that the several applications have been improperly and arbitrarily separate and divided in order to confuse the issue. Fair and proper determination of the applications require one hearing and much duplication of testimony and expense to Commission and parties, will be eliminated. Copy given [fol. 48] applicant and same motion made to Joint Board today. Action on motion must be had tomorrow to accomplish purpose.

Edgar Watkins, Jr.

Exhibit D

Before the Interstate Commerce Commission in the Matter of the Applications of Seaboard Air Line Railway

Dockets MC-86687 and Sub. Nos. 1, 2, 3, 4, 5, 6, 7

Petition

Comes now Southern Motor Carriers Rate Conference, Intervener, and moves that the above numbered dockets be consolidated and reset for hearing, and for cause show:

1

The Southern Motor Carriers Rate Conference is a corporation composed of more than 400 motor carriers operating to, from and between points in Southern territory.

2

Applicant, Seaboard Air Line Railway, has filed with the Commission eight applications on B. M. C. forms 8, for a certificate of public convenience and necessity covering common carrier operations by motor vehicle as follows: No. MC-86687, for a new operation between Gaston and Garnett, S. C., which application was heard by Joint Board 177 on June 12, 1937.

MC-86687, Sub. 1, extension of present operations between McBee and Sumter, S. C., which was heard by Joint Board 177 on June 12, 1937.

MC-86687, Sub. 2, for an extension of operations between Henderson and Raleigh, N. C., which is set for hearing before Joint Board 103 June 15, 1937.

MC-86687, Sub. 3, for an extension of operations between Hamlet, N. C., and Columbia, S. C., which was heard by Joint Board 2 on June 11, 1937.

MC-86687, Sub. 4, for an extension of operations between Hamlet and Raleigh, N. C., which is set for hearing before Joint Board 103 on June 15, 1937.

MC-86687, Sub. 5, for an extension of operations between [fol. 49] Hamlet and Wilmington, N. C., which is set for hearing before Joint Board 103 on June 15, 1937.

MC-86687, Sub. 6, for an extension of operations between Monroe and Rutherfordton, N. C., which is set for hearing before Joint Board 103 on June 15, 1937.

86687
TENNESSEE
ALABAMA
GEORGIA
ATLANTIC
CARIBBEAN SEA
GULF OF MEXICO
CHATTANOOGA
NEW ORLEANS
SAVANNAH
ST. AUGUSTINE
ST. PETERSBURG
EVERGLADES NATIONAL PARK
BAHAMA ISLANDS
Corrected to Sept. 6, 1938

(a)

MC-86687, Sub. 7, for an extension of operations between Richmond, Va., and Henderson, N. C., which is set for hearings before Joint Board 7 on June 14, 1937.

3

Intervener shows that many of its members operate motor carrier service over the routes requested in the above applications, and that the granting of such applications will adversely affect them, as well as the entire motor carrier industry in Southern territory.

4

At the hearings on Dockets MC-86687 and Subs. 1 and 3, Intervener moved that the hearings be cancelled and that the cases be consolidated with the other dockets above referred to, and Intervener on June 11, 1937, by wire presented the same motion to the Commission, and now renews these motions upon the same grounds stated there, and on further grounds stated herein.

5

By reference to the above-described applications, it will be seen that applicant is attempting to establish a through and complete motor carrier operation from Richmond, Va., on the north, to the Georgia-South Carolina line on the south, and from Wilmington on the east, to Rutherfordton on the west, with several short routes in between and by reference to an application by the same applicant under the grandfather clause which shows an existing operation between Hamlet and Monroe, N. C., it will be seen that applicant is attempting to parallel its entire rail lines in this area with motor carrier operation owned and controlled by applicant railroad.

6

In addition to operating as above stated, applicant operates rail service within the states of Georgia, Florida and Alabama, and its operation jointly by motor service and rail service would be operations affecting six states, and under section 205-B of the Motor Carrier Act, such applications should be referred to an examiner for hearing, and [fol. 50] the present hearings set before joint boards are illegal.

7

Evidence introduced by applicant at the hearings on the three dockets already heard shows clearly that applicant contemplates the institution of through motor carrier service over all of the routes covered by all of the dockets, and such is an operation by motor carrier solely, affecting three states, namely, Virginia, North Carolina and South Carolina, and under section 205-B of the Motor Carrier Act, such applications should be referred to a joint board composed of representatives from each of those states, and the hearings set before the joint boards are illegal.

8

Intervener alleges that applicant divided their operation into these separate applications for the purpose of confusing the issue, and preventing interested parties from knowing the full scope contemplated, and that the Commission cannot get a complete and accurate picture of the contemplated operation unless all of the applications are consolidated and heard together.

9

Intervener alleges that hearing these various applications separately will greatly increase the cost to the Interstate Commerce Commission, and to the parties, as it will be necessary to duplicate the testimony in each case.

Wherefore: Intervener prays that the hearings in the dockets that are now set be cancelled, and that consideration of the applications that have been heard be stayed, and all of the above-mentioned dockets be consolidated, and referred for hearing to a legally constituted joint board or examiner.

Respectfully submitted, Southern Motor Carriers Rate Conference; By Edgar Watkins, Jr., General Counsel.

Certificate

This is to certify that I have served a copy of this petition on the attorney for the applicant, this the 14th day of June, 1937.

Edgar Watkins, Jr.

[fol. 51] EXHIBIT E

Before the Interstate Commerce Commission Bureau of Motor Carriers

Motion to Consolidate Dockets MC-86687 and Sub. Nos. 1 through 17 and Dockets MC-28983 and MC-28984

Comes now the Southern Motor Carriers Rate Conference, hereinafter referred to as intervener, and files this, its motion to consolidate, showing the Commission, as follows:

I

Intervener is a non-profit corporation composed of more than 450 motor carriers engaged in the transportation of property in interstate commerce to, from and between points in the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia, which carriers are its members.

II

The Receivers of the Seaboard Air Line Railway, of Norfolk, Va., have filed the following applications for certificates of public convenience and necessity with the Commission requesting authority to transport property in interstate commerce over the following routes:

Docket MC-86687—Between Gaston and Garnett, S. C.
Sub. No. 1—Between McBee and Sumter, S. C.
Sub. No. 2—Between Henderson and Raleigh, N. C.
Sub. No. 3—Between Hamlet, N. C., and Columbia, S. C.
Sub. No. 4—Between Hamlet, N. C., and Raleigh, N. C.
Sub. No. 5—Between Hamlet and Wilmington, N. C.
Sub. No. 6—Between Monroe and Rutherfordton, N. C.
Sub. No. 7—Between Richmond, Va., and Henderson, N. C.
Sub. No. 8—Between Greenwood and Great Falls, S. C.

Sub. No. 9—Between Jacksonville and Live Oak, Fla.

Sub. No. 10—Between Live Oak and River Junction, Fla.

Sub. No. 11—Between Atlanta and Comer, Ga.

[fol. 52] Sub. No. 12—Between Americus and Dawson, Ga.

Sub. No. 13—Between Americus and Ocilla, Ga.

Sub. No. 14—Between Vidalia and Pembroke, Ga.

Sub. No. 15—Between Cedartown and Cartersville, Ga.

Sub. No. 16—Between Cartersville and Rockmart, Ga.

Sub. No. 17—Between Columbus and Bainbridge, Ga.

Docket MC-28983—Various routes in the states of N. C., Ga., and Fla. under "grandfather" application.

Docket MC-28984—Various routes in the states of N. C., Ga., and Fla. under "grandfather" application.

III

Docket MC-86687 and Sub. Nos. 1 through 7 have been heard by various Joint Boards and proposed reports have been issued therein; however, the said hearings in those cases were illegal for the reasons set out in motions and exceptions filed in said dockets. Intervener is a party of record in each of those cases.

IV

Docket MC-86687 (Sub. Nos. 8, 9 and 10) have been heard by various Joint Boards and a proposed report has been issued in Sub. No. 8; however, the said hearings in those cases were illegal for the reasons as above set forth.

V

Dockets MC-86687 (Sub. Nos. 11, 12, 13, 14, 15, 16 and 17) and Dockets MC-28983 and MC-28984 have not been assigned for hearing; however, it appears that the Commission following the procedure in other dockets filed by this applicant will assign the same for hearing before Joint

Boards, which hearings would be illegal for the reasons as set forth in paragraph VII hereto.

VI

Intervener shows that many of its members operate motor carrier service over the routes requested in the above applications, and that the granting of such applications will adversely affect them, as well as the entire motor carrier industry in Southern Territory.

[fol. 53] VII

Applicant at the present time is performing motor carrier service between certain points, for instance, between Hamlet and Monroe, N. C., and between Jacksonville and Wildwood, Fla., and other places, in addition to operating rail service within the States of Georgia, Florida, Alabama, South Carolina, North Carolina and Virginia, and handles freight in joint rail and truck service over its entire railroad and motor carrier operations.

Under Section 205 (b) of the Motor Carrier Act, 1935, all applications for motor carrier service affecting three or more States must be submitted to a Joint Board composed of a representative of each State, or an examiner or member of the Commission. Thus, the hearings that have been held and others that are contemplated are illegal for all of the applications above referred to should be consolidated and referred to an examiner or member of the Commission for hearing.

Evidence introduced by the applicant at the hearings on the dockets already heard before Joint Boards clearly shows that the applicant contemplates the institution of through motor carrier service paralleling all of its rail service and such contemplated operation affects more than three States.

Under Section 205 (b) of said Motor Carrier Act, 1935, therefore, such application should be referred to a Joint Board composed of representatives of each of these States, an examiner, or a member of the Commission.

VIII

Intervener alleges that applicant divided their operation into these separate applications for the purpose of confusing the issue, and preventing interested parties from knowing the full scope contemplated, and the Commission cannot get a complete and accurate picture of the contemplated operation unless all of the applications are consolidated and heard together.

IX

Intervener alleges that hearing these various applications separately will greatly increase the cost to the Interstate Commerce Commission, and to the parties, as it will be necessary to duplicate the testimony in each case.

[fol. 54] Wherefore, Intervener prays:

(1) That action in application Dockets MC-86687 and Sub. Nos. 1 through 10 heretofore heard be stayed.

(2) That the Commission assign for hearing all the afore-mentioned Dockets Nos. MC-86687 and Sub. Nos. 1 through 17 and MC-28983 and MC-28984 including those which illegal hearings have heretofore been held, before a properly and legally constituted Joint Board composed of representatives of all States involved, or an examiner, or a member of the Commission, as required by Section 205 (b) of the Motor Carrier Act, 1935.

Respectfully submitted, Southern Motor Carriers Rate Conference, Edgar Watkins, Jr., General Counsel.

808 Bona Allen Building, Atlanta, Ga., January 27, 1938.

Exhibit F

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. S., on the 16th day of February, A. D., 1938.

No. MC-28983

Seaboard Air Line Railway, Common Carrier Application

No. MC-28984

Seaboard Air Line Railway, Common Carrier Application

No. MC-86687

Seaboard Air Line Railway, Common Carrier Application

No. MC-86687 (Sub. Nos. 1 Through 17)

Seaboard Air Line Railway, Extension of Operations

Upon further consideration of the record and of the motion of Southern Motor Carriers Rate Conference to consolidate the above-entitled matters; and good cause therefor appearing;

[fol. 55] *It is ordered*, That the said motion to consolidate of the Southern Motor Carriers Rate Conference be, and it is hereby, denied.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal.)

Exhibit G

Before the Interstate Commerce Commission, Bureau of Motor Carriers

Petition for Intervention in Dockets MC-28983, 28984, 86687, and 86687 (Sub. Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17)

Comes now the Southern Motor Carriers Rate Conference, hereinafter referred to as intervener, and prays that the Commission give consideration to this, its formal

prayer for intervention in the above numbered dockets; grant it the right to intervene, to be heard on brief, and to take part in any proceedings which may hereafter be held in these dockets; and shows the Commission its interest in the same, as follows:

I

Intervener is a non-profit corporation with offices in Atlanta, Georgia, and is composed of more than four hundred and fifty motor carriers engaged in the transportation of property in interstate commerce to, from and between points in the Southern States. A list of such carriers is attached hereto as Exhibit "A."

II

The applications for certificates of public convenience and necessity filed by appellant in these dockets cover the routes and the territory in which many of intervener's members are now operating, and the granting of the authority sought by this applicant would directly and seriously interfere with and injure such of intervener's members.

III

The applications for certificates of public convenience and necessity filed by applicant in these dockets by reason [fol. 56] of the important principles involved, affect all the members of intervener whether operating over the routes in question or not.

IV

These dockets are a part of and relate to dockets MC-86687 and MC-86687 (Sub. Nos. 1 through 7) of this same applicant in which intervener was a party by petition of intervention, presented evidence, cross examined witness, filed brief and was heard on exceptions and otherwise given the privilege to protect its interest and the interest of its members as they appeared and might appear.

Wherefore, Intervener prays that the Commission will grant this, its petition of intervention in the dockets above numbered.

Respectfully submitted, Southern Motor Carriers Rate Conference, Edgar Watkins, Jr., General Counsel.

MEMBERSHIP LIST

Exhibit "A"

SOUTHERN MOTOR CARRIERS RATE CONFERENCE

808 Bona Allen Building,
ATLANTA, GA.

October 14, 1937.

Name of Carrier	Address	City and State
	ALABAMA	
Anniston Motor Express		Anniston, Ala.
Baggett Transportation, Inc.	2417 Ave. A., S.	Birmingham, Ala.
Barber Transportation Co.	Box 604	Dothan, Ala.
Bayou La Batre Dauphin Island Express		Bayou La Batre, Ala.
Bell Transfer Company		Selma, Ala.
Birmingham Transfer Co., Inc.	2518 Sixth Ave., N.	Birmingham, Ala.
Bishop Truck Line		Sylacauga, Ala.
Bolton Motor Van Lines	306 North 16th St.	Birmingham, Ala.
Brooks Truck Line	213 N. Perry St.	Montgomery, Ala.
Cahaba Freight Line	1310 First Ave. No.	Birmingham, Ala.
Jack Cole Company, Inc.	2315 Fifth Ave. So.	Birmingham, Ala.
Deaton Truck Lines, Inc.	1310 First Ave. No.	Birmingham, Ala.
Ellis Truck Lines		Jasper, Ala.
Fuller Truck Line		Wetumpka, Ala.
[fol. 57]		
Griffith Freight Line, Inc.	1424 Second Ave. N.	Birmingham, Ala.
Gulf Transport Company		Mobile, Ala.
Hains Brothers Truck Line		Selma, Ala.
Hilton J. Harrell		Enterprise, Ala.
Howard Hall Company, Inc.		Birmingham, Ala.
W. R. Hendrix Freight Line		Blountville. Ala.
Hilyer and Handley Transfer Co.		Sycamore, Ala.
Jackson Truck Line		Montgomery, Ala.
J. D. Jordan, Jr.		Centre, Ala.
Thomas M. Lambert		Opelika, Ala.
Tallassee Truck Line	516 N. Lawrence St.	Montgomery, Ala.
Malone Fast Freight		Decatur, Ala.
Malone Freight Line		Decatur, Ala.
Roy S. Martin		Red Bay, Ala.
McCrary Transfer Co.	P. O. Box 146	Decatur, Ala.
McDonald & Elington Freight Lines	117 Bell St.	Montgomery, Ala.
McWhorter Transfer Co.		Fort Payne, Ala.
Motor Terminal & Trans. Co., Inc.		Montgomery, Ala.
Nelson Transfer Co.	1430 8th Ave. No.	Birmingham, Ala.
North Alabama Motor Express, Inc.	2320 Second Ave. S.	Birmingham, Ala.
Pugh Transfer		Union Springs, Ala.
Red Top Transfer Company		Tuscaloosa, Ala.
J. Owen Robins		Jasper, Ala.
Schlosser Freight Line	2330 4th Ave., No.	Birmingham, Ala.
Sharp Transfer		Florence, Ala.
Jack Skewes	P. O. Box 405, Rt. 2,	Bessemer, Ala.
Southern Highway Express, Inc.	1310 First Ave. N.	Birmingham, Ala.
Southern Motor Express, Inc.	1516 Second Ave. N.	Birmingham, Ala.
St. Andrews Bay Transportation Co.		Dothan, Ala.
W. L. Thompson		Troy, Ala.
Union Express Freight Co., Inc.		Mobile, Ala.
United Motor Freight Terminal, Inc.		Birmingham, Ala.
Warrior River Freight Line		Jasper, Ala.
Williams Transfer Co.		Decatur, Ala.

Name of Carrier	Address	City and State
ARKANSAS		
Bennett Truck Line		Paragould, Ark.
MISCELLANEOUS		
Atlantic Moving & Warehouse Co.		Hartford, Conn.
M. J. Kline		Hartford, Conn.
Harlan N. Newberry		Hartford, Conn.
William L. Curles		Washington, D. C.
Doub Transfer & Storage Co.		Washington, D. C.
Freeman Transfer & Storage Co.		Washington, D. C.
Economical Moving Co.		Washington, D. C.
National Delivery Assn., Inc.		Washington, D. C.
Rogers Transfer		Washington, D. C.
Tanner's Transfer		Washington, D. C.
Terminal Van & Storage Co.		Washington, D. C.
[fol. 58] **FLORIDA**		
Acme Freight Lines, Inc.		Jacksonville, Fla.
Bee Line Transfer Co.		Tampa, Fla.
Blue's Truck Line, Inc.	520 E. Forsyth St.	Jacksonville, Fla.
Brown's Motor Freight Lines, Inc.,	Foot Newman St.	Jacksonville, Fla.
C & H Transfer Company		Ft. Lauderdale, Fla.
Central Truck Lines, Inc.	405 Eunice St.	Tampa, Fla.
Delcher Bros. Storage Co.		Jacksonville, Fla.
Edwards Line		Tampa, Fla.
Elliott-Young Consolidated, Inc.	1520 Clare Avenue	W. Palm Beach, Fla.
Fogarty Brothers Transfer, Inc.		Bradenton, Fla.
Great Southern Truck Co. (Includes Lane's Truck Line and National Convoy & Trucking Co.)	1061 Clark St.	Jacksonville, Fla.
Green Brothers Transfer	Box 52	Clearwater, Fla.
Hartline Line		Tampa, Fla.
Hunt Truck Line	302 N. Jefferson St.	Tampa, Fla.
Jacksonville Beach Truck Line	809 W. Forsyth St.	Jacksonville, Fla.
Kennelly Transfer & Storage Co.	724 Pippin St.	Jacksonville, Fla.
Pete Koplinski		Tampa, Fla.
L & L Freight Lines, Inc.	1418 W. Church St.	Jacksonville, Fla.
Mathews Truck Line	259 NW Fourth St.	Miami, Fla.
McJunkin Truck & Bus Line		Fernandina, Fla.
Over-Seas Transportation, Inc.		Miami, Fla.
Peter's Truck Line		St. Augustine, Fla.
Pittman Truck Line		Pensacola, Fla.
R-C Motor Lines	112 Stewart St.	Jacksonville, Fla.
Star Truck Line, Inc.	Box 2421	Tampa, Fla.
St. Johns River Line		Jacksonville, Fla.
Southern Transfer & Storage Co.		St. Petersburg, Fla.
Suddath Moving & Storage Co.		Tampa, Fla.
Suddath Moving & Storage Co.		Jacksonville, Fla.
Tamiami Trail Tours, Inc.		Tampa, Fla.
Tarpon Truck Line		Tarpon Springs, Fla.
University City Transfer Co., Inc.		Gainesville, Fla.
GEORGIA		
AAA Highway Express, Inc.	24 14th St. NW	Atlanta, Ga.
Aaron Transit Co.	85 Houston St.	Atlanta, Ga.
Anderson Motor Line		Elberton, Ga.
Atlanta-Macon Motor Express, Inc.		Jackson, Ga.
Atlanta-Union Point Trucking Co., Inc.		Greensboro, Ga.
Augusta Truck Company, Inc.	21 Campbell Bldg.	Augusta, Ga.
Barnes Freight Lines		Carrollton, Ga.
A. A. Bassett Transfer Co.	713 S. Greenwood Street	LaGrange, Ga.

Name of Carrier	Address	City and State
Benton Rapid Express, Inc.	410 W. Jones St.	Savannah, Ga.
Bona Allen Industries Truck Line		Buford, Ga.
Brown Transfer & Storage Co.	Broad St.	Rome, Ga.
Burnham's Van Service		Columbus, Ga.
T. C. Burton		Rome, Ga.
[fol. 59]		
Capital Freight Line, Inc.	552 Murphy Ave., SW	Atlanta, Ga.
Carter Motor Lines	548 W. Oglethorpe Ave.	Savannah, Ga.
Cedartown-Atlanta Freight Lines		Cedartown, Ga.
Consolidated Van & Storage Co.	Volunteer Bldg.	Atlanta, Ga.
Continental Carriers, Inc.	215 Courtland St. NE	Atlanta, Ga.
Dewberry & Henry Truck Line		Temple, Ga.
Dixie Freight Lines, Inc.	35 Fair St. SE	Atlanta, Ga.
East & West Motor Lines, Inc.	20 14th St. NW	Atlanta, Ga.
Edwards Freight Line		Monticello, Ga.
Fedderwitz Trucking Co.	Box 864	Savannah, Ga.
Fireproof Storage Company	133 E. Bay St.	Savannah, Ga.
Five Transportation Co.	301 Gloucester St.	Brunswick, Ga.
Georgia Highway Express, Inc.	11 Krog St. NE	Atlanta, Ga.
Georgia Motor Express, Inc.	DeKalb & Krog St.	Atlanta, Ga.
Granite City Transfer Co.		Elberton, Ga.
Harper Motor Lines		Elberton, Ga.
Harrison Transfer Co.	1002 Fenwick St.	Augusta, Ga.
Carroll Hawkins		Canton, Ga.
Russell C. House Transfer & Storage	135 Auburn Ave. NE	Atlanta, Ga.
Hunt Freight Lines		LaFayette, Ga.
Independent Transfer Co.		Brunswick, Ga.
Homer Jones Transfer		Columbus, Ga.
K & L Transportation Co., Inc.		Waycross, Ga.
A. V. Kennedy & Co.		Waycross, Ga.
Maner's Transfer	238 Fifth Ave.	Rome, Ga.
Manley Bros.		Eatonton, Ga.
Clifford Martin Transfer		Columbus, Ga.
Mathews Transfer Co.		Thomaston, Ga.
T. C. Meaders		Covington, Ga.
Moffet Transit Lines	350½ Cherry St.	Macon, Ga.
Monroe Motor Express		Monroe, Ga.
Montgomery-Atlanta Motor Freight Lines, Inc.	436 Whitehall St. SW	Atlanta, Ga.
S. J. Morris	1115 Princess Ave. SW	Atlanta, Ga.
George C. Murdock	13 N. Hamilton St.	Dalton, Ga.
North Georgia Transportation Co.		Canton, Ga.
Northern Freight Lines	Box 445	Gainesville, Ga.
Wm. F. Pendleton	Box 727	Valdosta, Ga.
W. R. Pickard	210 N. Fourth St.	Tifton, Ga.
P. H. Ponder		Madison, Ga.
Reliable Transfer Company	8 Ninth St.	Augusta, Ga.
Reliable Trucking Co., Inc.	8 Ninth St.	Augusta, Ga.
Sale Transfer Company	1002 Fenwick St.	Augusta, Ga.
Savannah & Augusta Transportation		Sylvania, Ga.
Southeastern Transfer & Stg. Co.	168 Forsyth St. SW	Atlanta, Ga.
Starr Transfer Company		Rockmart, Ga.
Statesboro & Savannah Trk. Line	118 N. College St.	Statesboro, Ga.
Suddath Moving and Storage Co.		Atlanta, Ga.
[fol. 60]		
Thomas Transfer Company		Athens, Ga.
Thomas Transfer		Trion, Ga.

Name of Carrier	Address	City and State
Wm. M. Thomas		Valdosta, Ga.
Trans-Continental Van Lines		Atlanta, Ga.
J. Paul Upchurch	820 First National Bank Bldg.	Atlanta, Ga.
Walton Truck Line		Tallapoosa, Ga.
Washburn Storage Company		Macon, Ga.
Carey F. Weathers Trans. & Storage Co.	1268 Druid Pk. Ave.	Augusta, Ga.
Weathers Bros. Transfer Co., Inc.	733 Boulevard, NE	Atlanta, Ga.
A. C. White Transfer & Stor. Co.	414 Edgewood Ave.	Atlanta, Ga.
Wimberly Transfer Company		Valdosta, Ga.
John C. Wilson		Millen, Ga.
Zaban Storage Co.	12-14 Spring St. SW	Atlanta, Ga.
MISCELLANEOUS		
American Van Service		Chicago, Ill.
National Van Lines		Chicago, Ill.
Red Ball Movers		Chicago, Ill.
Johnson Storage & Transfer	712 Connecticut	Gary, Ind.
Public's Moving Company		Hammond, Ind.
Terminal Transport Co., Inc.		Indianapolis, Ind.
KENTUCKY		
Eastern Motor Freight Company	(Mail, Louisville, Ky.)	Pittsburgh, Pa.
Huber & Huber Motor Express, Inc.		Louisville, Ky.
Robert James		Franklin, Ky.
The Silver Motor Express, Inc.		Louisville, Ky.
LOUISIANA		
Fabacher Motor Express	201 N. Front St.	New Orleans, La.
Littlejohn Transfer & Stor. Co.	1503 N. Boulevard	Baton Rouge, La.
Mobile Express, Inc.	1155 Constance St.	New Orleans, La.
Sanders Truck Line		Kentwood, La.
Shanks Truck Lines		Lake Providence, La.
Tri-State Motor Express Co.	1722 Erato St.	New Orleans, La.
MISCELLANEOUS		
Chernock Transfer Company		Baltimore, Md.
Vahan Apikian, d/b/a United Motor Lines		Watertown, Mass.
C. Bain	487 Medford St.	Somerville, Mass.
F. A. Hinde & Son	11 Myrtle St.	Somerville, Mass.
John Nayarian		Watertown, Mass.
Farr Moving Company	2523 Beniteau Ave.	Detroit, Mich.
Hamilton Moving & Storage Co.	5161 Hamilton Ave.	Detroit, Mich.
Owl Moving, Stor. & Cartage Co.		Detroit, Mich.
Stewart Moving Company	1864 John R St.	Detroit, Mich.
Suburban Van Lines, Inc.		
Woodland Transfer Co.	2905 26th Ave. S.	Minneapolis, Minn.
MISSISSIPPI		
T. W. Anderson		Hazlehurst, Miss.
Bailey Truck Service, Inc.	P. O. Box 162	Natchez, Miss.
[fol. 61]		
Bond Motor Lines		Jackson, Miss.
Dean Truck Line	Wick & Filmore Sts.	Corinth, Miss.
Green Truck Line		Hattiesburg, Miss.
Ernest B. Lewy		Greenville, Miss.
Luter's Truck Lines, Inc.	Box 848	Meridian, Miss.
Magee Truck Lines, Inc.		Jackson, Miss.

Name of Carrier	Address	City and State
McDonough Motor Express, Inc.		Hattiesburg, Miss.
McGehee Transfer Company	1111 W. Capitol St.	Jackson, Miss.
Red Ball Express Lines		Brookhaven, Miss.
Slade Truck Lines, Inc.		Hattiesburg, Miss.
Vicksburg Transfer Co.		Vicksburg, Miss.

MISCELLANEOUS

Needles Moving & Storage Co.		St. Louis, Mo.
Terminal Warehouse Corp.		Omaha, Nebr.
Community Van Service		Palisades Park, N. J.
Empire Moving & Storage Co.		Bayonne, N. J.
Engle Brothers		Elizabeth, N. J.
Ace Van Lines	5914 Fourth Ave.	Brooklyn, N. Y.
Al's Van Company	245 E. 81st St.	New York, N. Y.
Anaconda Van Service, Inc.		New York, N. Y.
Anderson Van Service, Inc.	5623 20th Ave.	Brooklyn, N. Y.
Christopher Bardunias		New York, N. Y.
Bay Shore Van Service		Bay Shore, N. Y.
Caswell Van Lines		Henrietta, N. Y.
Comet Van Lines		New York, N. Y.
Gene Eddies Van, Inc.		New York, N. Y.
National Movers of N. Y., Inc.		New York, N. Y.
Return Loads Bureau		New York, N. Y.
United Transit Lines, Inc.	91 Seventh Ave.	New York, N. Y.
Vanportation & Warehouse Corp.		Long Isl. City, N. Y.

NORTH CAROLINA

Abernethy Transfer & Stor. Co.	Water Ave. at 11th St.	Hickory, N. C.
Akers & Hudson Motor Lines, Inc.,	363 W. Airline Ave.	Gastonia, N. C.
Anderson Truck Line		Lenoir, N. C.
Atlantic States Motor Lines, Inc.,	P. O. Box 1051	High Point, N. C.
Axley Truck Line		Murphy, N. C.
Barbour's Motor Express		Fuquay Spr'gs, N. C.
Barnwell Brothers, Inc.		Burlington, N. C.
Black Motor Express	3 So. Water St.	Wilmington, N. C.
Blizard Motor Express		Mount Airy, N. C.
L. H. Bottoms Truck Line, Inc.	Box 1763	High Point, N. C.
Bowen Transfer Company	Box 224	Roxboro, N. C.
Buffaloe Brothers		Carthage, N. C.
Burton Motor Lines		Reidsville, N. C.
C & S Motor Express Company		N. Wilkesboro, N. C.
Capital Coast Express		Clayton, N. C.
Carolina Freight Carriers Corp.		Cherryville, N. C.
Carolina Transfer & Storage Co.	1203 W. Morehead St.	Charlotte, N. C.
Collins Transfer & Storage		Lumberton, N. C.
Colonial Motor Freight Lines		High Point, N. C.

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Commonwealth Motor Dispatch		Charlotte, N. C.
Davis Transportation Truck Line	30 Commercial Pl.	Roanoke Rpds, N. C.
E & H Trucking Company		Albemarle, N. C.
East Carolina Freight Line		New Bern, N. C.
D. E. Everett		Conetoe, N. C.
Farrar Transfer Company	1121 S. Front St.	Wilmington, N. C.
Four Oaks Transfer		Four Oaks, N. C.
R. D. Fowler Motor Lines, Inc.	518 W. High St.	High Point, N. C.
Fredrickson Motor Express Corp.		Charlotte, N. C.
George Freeman Truck Lines		Zirconia, N. C.
Goff Motor Lines, Inc.		High Point, N. C.
Goldston Motor Express		Spray, N. C.
Helm Motor Express		Albemarle, N. C.

Name of Carrier	Address	City and State
I. H. Hill		Durham, N. C.
Hooks Motor Lines		High Point, N. C.
Horton Motor Lines, Inc.	1001-1031 S. Clarkson St.	Charlotte, N. C.
Houston & Cloutz Motor Express		Ingalls, N. C.
H. Hunt & Company	120 N. Water St.	Wilmington, N. C.
Imperial Transportation Co., Inc.	P. O. Box 633	Greensboro, N. C.
Interstate Transfer		High Point, N. C.
Johnson Transit Company		Dunn, N. C.
Leary Brothers Storage Company		Edenton, N. C.
Lentz Transfer & Stg. Co.	Union Motor Frt. Terminal	W'ston-Salem, N. C.
Lewis & Holmes Motor Frt. Corp.	Box 206	High Point, N. C.
J. Wesley Lowther	216 Tuckaseege Rd.	Charlotte, N. C.
M & M Motor Express		N. Wilkesboro, N. C.
Martin Motor Lines	104 S. Main St.	Belmont, N. C.
Maynor Transfer Company		Fayetteville, N. C.
Miller Motor Express	6th & Brevard Sts.	Charlotte, N. C.
Miller Motor Lines		Lenoir, N. C.
Motor Transit Company		Raleigh, N. C.
N. B. & C. Motor Lines		Washington, N. C.
National Convoy & Trucking Co.	918 Oaklawn Ave.	Charlotte, N. C.
North Carolina Line, Inc.		Wilmington, N. C.
N. Wilkesboro & Statesville Mtr. Exp.		N. Wilkesboro, N. C.
P & F Motor Express, Inc.		Wilmington, N. C.
Parker & Stout Transfer Co.	1325 S. Main St.	High Point, N. C.
J. W. Propst, Jr., Inc.		Concord, N. C.
Raleigh-Danville Motor Express		Raleigh, N. C.
Ratley's Transfer		Lumberton, N. C.
Ratliff & Ratliff		Morven, N. C.
Shaw Transfer Company		Salisbury, N. C.
Smith's Transfer Company, Inc.	P. O. Box 599	Lenoir, N. C.
Smith's Transfer Company		Lenoir, N. C.
Southern Spindle & Flyer Co.		Charlotte, N. C.
Stallings Transfer Service	P. O. Box F	Spring Hope, N. C.
Tallant Transfer Company		Hickory, N. C.
Textile Transportation, Inc.		Burlington, N. C.
Thurston Motor Lines	208 N. Railroad St.	Wilson, N. C.
[fol. 63]		
Turner's Trucking Co.	101 S. Lexington Ave.	Asheville, N. C.
United Express Company		Henderson, N. C.
Vicks Truck Line		Woodland, N. C.
Walser Transportation, Inc.	Box 1451	Greensboro, N. C.
Warren's Transfer	305 W. Martin	Raleigh, N. C.
W & E Motor Express		Elkin, N. C.
Widenhouse Transfer Company		Midland, N. C.
Winecoff Transfer Co.		Concord, N. C.
R. Glenn Winecoff		Concord, N. C.
C. B. Yates Motor Express		N. Wilkesboro, N. C.

MISCELLANEOUS

Dixie Ohio Express Company	538 E. South St.	Akron, Ohio
Garrett Van Service		Toledo, Ohio
Roadway Express, Inc.	97 E. South St.	Akron, Ohio
Atlantic States Line, Inc.	Pier 19, N. Delaware Ave.	Philadelphia, Pa.
Good Moving & Storage Co.	15 N. 59th St.	Philadelphia, Pa.
Paul Gonez	1029 E. Tioga St.	Philadelphia, Pa.
Shadyside Transfer & Storage Co.		Pittsburgh, Pa.

Name of Carrier	Address	City and State
SOUTH CAROLINA		
Batesburg Hauling Co., Inc.		Batesburg, S. C.
Beard Laney Hauling Company		Camden, S. C.
Brown Motor Lines & Stg. Corp.	235 W. Coffee St.	Greenville, S. C.
Carey Transfer & Stg. Co., Inc.	296 S. Liberty St.	Spartanburg, S. C.
Carolina Transfer Company		Greenville, S. C.
T. G. Chaplin		Hartsville, S. C.
Charleston Motor Express		Charleston, S. C.
Checker Transportation & Stg. Co.	P. O. Box 251	Columbia, S. C.
T. B. Clark		Lynchburg, S. C.
Ulysse G. DesPortes		Winnsboro, N. C.
W. R. Dobson, Jr.	R. F. D., Beach Island, S. C.	Augusta, Ga.
J. S. Edmunds Trucking		Clover, S. C.
C. P. Fleming		Tillman, S. C.
G & P Trucking Company		Greenwood, S. C.
William Edward Gettys, Jr.	32 Hampton Ave.	Greenville, S. C.
H & B Trucking Co., Inc.		Rock Hill, S. C.
Bruce Harter		Fairfax, S. C.
C. A. Harvin, Jr., Truck Line		Summerton, S. C.
M. D. Hicklin Motor Trucker		Columbia, S. C.
Cecil Hodge	1 Manning St.	Sumter, S. C.
J. W. Huckabee		Greenwood, S. C.
Inland Waterways Transfer Co.	P. O. Box 635	Georgetown, S. C.
Interstate Truck Line		Aiken, S. C.
Louis P. Jervey, Inc.	53 Market St.	Charleston, S. C.
Johnson Transfer Company	301 E. McBee Ave.	Greenville, S. C.
O. D. Jones	Box 63	N. Charleston, S. C.
Carroll T. Jordan		Hartsville, S. C.
Alva Keels	Box 610	Florence, S. C.
[fol. 64]		
Kelly Transfer		Florence, S. C.
Long Motor Lines		Greenwood, S. C.
Lowe's Transfer		Aiken, S. C.
Martin Motor Line	700 Pendleton St.	Columbia, S. C.
McAlister Transfer Co., Inc.	1 Westcott Court	Charleston, S. C.
McDougall Transfer Co.		Cheraw, S. C.
J. F. McLaurin, Inc.		McColl, S. C.
Motor Express, Inc.		Columbia, S. C.
New South Express Lines, Inc.	Box 479	Columbia, S. C.
Nilson Motor Express Lines		Walterboro, S. C.
Southern United Lines, Inc.		Greenville, S. C.
Parrish Dray Line		Sumter, S. C.
Peoples Motor Express, Inc.		Charleston, S. C.
Poole Transportation, Inc.		Greenville, S. C.
Privett & Mozingo		Florence, S. C.
David I. Reardon	316 N. Salem St.	Sumter, S. C.
V. L. Rice		Rock Hill, S. C.
Rogers & Mease Transfer		Greenville, S. C.
Neil Sanders		Allendale, S. C.
Sineath Truck Line		Timmonsville, S. C.
Smith & Waters		Johnston, S. C.
Stanton Transportation Co., Inc.		Bennettsville, S. C.
J. T. Strickland Truck Line		Bishopville, S. C.
C. M. Taylor		Manning, S. C.
Textile Warehouse Company		Greenville, S. C.
The Transportation, Inc.		Greenville, S. C.
Vaughan's Transfer		Union, S. C.
White Truck Line	212 Brockman Ave.	Greenville, S. C.

Name of Carrier	Address	City and State
	TENNESSEE	
A. B. A. Transfer		Memphis, Tenn.
Argo & Collier Truck Line		Martin, Tenn.
Armstrong Transfer & Storage	280 Poplar St.	Memphis, Tenn.
Bass Transfer Co., Inc.		Watertown, Tenn.
W. F. Cassady		Clinton, Tenn.
Centerville Truck Line		Centerville, Tenn.
Chambers Truck Company, Inc.		McMinnville, Tenn.
Chambers Trucking Co.	East Count St.	Dyersburg, Tenn.
Chandler Transfer & Frt. Line	1107 Chestnut St.	Chattanooga, Tenn.
Wagners Fast Freight Service	613 East 11th St.	Chattanooga, Tenn.
Dhockley Truck Lines		Shelbyville, Tenn.
Cincinnati-Southern Mtr. Exp.	310 4th Ave. S.	Nashville, Tenn.
Cleveland Transfer Company		Cleveland, Tenn.
Covington Express, Inc.	158 East Virginia	Memphis, Tenn.
Cumberland Freight Lines, Inc.	132 5th Ave, S.	Nashville, Tenn.
Joe Davis Truck Line		Winchester, Tenn.
Delta Fast Frt. Line	302 South Main	Memphis, Tenn.
Dixie Motor Express Co.	575 S. Front St.	Memphis, Tenn.
Dotson Motor Express, Inc.	(Mail—Nashville, Tenn.)	Glasgow, Ky.
Duggin Truck Line		Woodbury, Tenn.
ET&WNC Mtr. Transp. Co.		Johnson City, Tenn.
Eagleville Transfer Company		Eagleville, Tenn.
[fol. 65]		
Early Brothers		Lenoir City, Tenn.
Easterwood Transfer Company		Union City, Tenn.
Ellis Moving Co. & Safe Van Lines		Nashville, Tenn.
Franklin Transfer Company		Franklin, Tenn.
Fayetteville Transfer Company	808 Lea Ave.	Nashville, Tenn.
Gobell Truck Line		Hohenwald, Tenn.
Goggin Truck Lines		Shelbyville, Tenn.
D. Graham	Route No. 3, Box 140	Memphis, Tenn.
Hayes Transfer & Freight Line		Clarksville, Tenn.
Hoover Lines, Inc.	Chamberlain St.	Knoxville, Tenn.
Hoover Truck Co., Inc.	415 5th Ave., S.	Nashville, Tenn.
Hoover Lines, Inc.		Nashville, Tenn.
House Motor Express	158 East Virginia	Memphis, Tenn.
Houser Freight Line	200 Randolph St.	Knoxville, Tenn.
Inter-City Trucking Company	575 S. Front St.	Memphis, Tenn.
Jenkins & Sampson Frt. Lines		Lebanon, Tenn.
Johnson Freight Lines, Inc.	1204 Broad St.	Chattanooga, Tenn.
Jones Livery Company		Gallatin, Tenn.
Kemp Transfer Company		Paris, Tenn.
Lawrenceburg Transfer Company		Lawrenceburg, Tenn.
Lewisburg Transfer Co., Inc.		Lewisburg, Tenn.
Luke's Motor Express, Inc.	174 East St.	Memphis, Tenn.
T. J. McBroom		Woodbury, Tenn.
McWhorter Transfer Co.		Chattanooga, Tenn.
Magill Motor Express		Chattanooga, Tenn.
Manners Motor Express	606 5th Ave., S.	Nashville, Tenn.
The Mason & Dixon Lines		Kingsport, Tenn.
A. J. Miller Truck Line	(Memphis, Tenn.)	Clarksdale, Miss.
Morris Transfer		Ashland City, Tenn.
Motor Transfer Company, Inc.	State & 9th Sts.	Bristol, Tenn.
Mt. Pleasant Transfer Co.		Mt. Pleasant, Tenn.
Murfreesboro F'g't . ine Co., Inc.		Murfreesboro, Tenn.
W. W. Murphey		Rossville, Tenn.
Nashville-Old Hickory Frt. Lines	40 Demonbreum St.	Nashville, Tenn.
Neisler Transfer Co.		Lexington, Tenn.
Osborne Interstate Transit		Cleveland, Tenn.
Peoples Transfer Company		Johnson City, Tenn.
Potter Freight Line		Sparta, Tenn.

Name of Carrier	Address	City and State
Pulaski Highway Express	132 5th Ave., S.	Nashville, Tenn.
Red Ball Trucking Company		Martin, Tenn.
Sain Transfer Company		Manchester, Tenn.
Sanders Truck Line		Springfield, Tenn.
Security Transfer & Storage Co.		Chattanooga, Tenn.
Shaff Transfer & Storage Co.	947 Main St.	Nashville, Tenn.
Shipper's Forwarding Company	Mulberry & Huling Sts.	Memphis, Tenn.
Shull Truck Line		Waynesboro, Tenn.
The Silver Fleet of Memphis, Inc.	109 W. McLemore St.	Memphis, Tenn.
Smith Brothers	105 1st Ave., N.	Nashville, Tenn.
Southeastern Motor Truck Lines, Inc.		Nashville, Tenn.
Stephens Truck Line		Dickson, Tenn.
[fol. 66]		
Super Service Motor Freight Co.	808 Lea Ave.	Nashville, Tenn.
Sutton Transfer Co., Inc.		Maryville, Tenn.
Tennessee-Alabama Transport Co.	1107 Chestnut St.	Chattanooga, Tenn.
W. H. Tompkins Company, Inc.	908 3rd Ave., N.	Nashville, Tenn.
Wagner's East Freight Service		Dunlap, Tenn.
Wilson Truck Company	205 5th Ave., S.	Nashville, Tenn.
VERMONT		
Chase Movers		Burlington, Vt.
VIRGINIA		
A. B. C. Storage & Van Co.	746 Granby St.	Norfolk, Va.
W. N. Baisey		Danville, Va.
Booze Truck Lines		Roanoke, Va.
Carolina Norfolk Truck Line, Inc.		Norfolk, Va.
Danville & Durham Motor Fgt. Line	726 Temple Ave.	Danville, Va.
Eastern Motor Express		Roanoke, Va.
Estes Express Lines		Chase City, Va.
Philip Greenberg Motor Express	800 Pine St.	Danville, Va.
Interstate Trucking Co.	62 Commonwealth Ave.	Bristol, Va.
Jackson Transfer & Storage Co.	746 Granby St.	Norfolk, Va.
Johnson Motor Line	541 Bridge St.	Danville, Va.
D. D. Jones Transfer & Warehouse	209 W. Maine St.	Norfolk, Va.
Munday Motor Lines	30-32 Wells Ave., N. E.	Roanoke, Va.
Norfolk, Baltimore & Carolina Line	Piers Nos. 1 & 2, Clyde Line, Water St.	Norfolk, Va.
Norfolk Southern Bus Corp.		Norfolk, Va.
Old Dominion Freight Line	5 S. Broad St.	Richmond, Va.
Overnite Transportation	510 W. Ninth St.	Richmond, Va.
S. P. Rutherford Transfer		Bristol, Va.-Tenn.
Rutherford Freight Lines, Inc.		Bristol, Tenn. (Va.)
J. C. Shelburne Transfer & Stg. Corp.		Richmond, Va.
T. H. Motor Lines		Norfolk, Va.
Turner Motor Lines, Inc.	210 Lynn St.	Danville, Va.

[fol. 67] EXHIBIT H

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 16th day of February, A. D. 1938.

No. MC-86687

Seaboard Air Line Railway, Common Carrier Application

No. MC-86687 (Sub. No. 8)

Seaboard Air Line Railway, Extension of Operations

Upon further consideration of the record and of the petition of Southern Motor Carriers Rate Conference for leave to intervene in the above-entitled matters and good cause therefor appearing;

It is ordered, That the Southern Motor Carriers Rate Conference be, and it is hereby, permitted to intervene and be treated as a party to said matters, with the right to appear and participate in any further proceedings, if any further proceedings are held, and to have notice of and be heard in person or by counsel at oral argument, if oral argument is granted.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT I

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 16th day of February, A. D. 1938.

No. MC-86687 (Sub. Nos. 9 and 10)

Seaboard Air Line Railway Co., Extension of Operations

Upon consideration of the record and of the petition of Southern Motor Carriers Rate Conference for leave to intervene in the above-entitled matter; and good cause therefor appearing;

It is ordered, That Southern Motor Carriers Rate Conference be, and it is hereby, permitted to intervene with the right to file exceptions to the recommended order and [fol. 68] report and to appear and participate in any further proceedings, if any further proceedings are held;

And it is further ordered, That a copy of this order be served upon petitioners and that a copy of this order and of the intervening petition be served upon each of the parties to this proceeding.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT J

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 16th day of February, A. D. 1938.

No. MC-28983

Seaboard Air Line Railway, Common Carrier Application

No. MC-28984

Seaboard Air Line Railway, Common Carrier Application

No. MC-86687 (Sub. Nos. 11 through 17)

Seaboard Air Line Railway, Extension of Operations

Upon further consideration of the record and of the petition of Southern Motor Carriers Rate Conference for leave to intervene in the above-entitled matters and good cause therefor appearing;

It is ordered, That the Southern Motor Carriers Rate Conference be, and it is hereby, permitted to intervene and be treated as a party to said matters, with the right to have notice of and to appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon briefs and at oral argument, if oral argument is granted.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

[fol. 69] EXHIBIT K

Interstate Commerce Commission

No. MC-86687 (Sub. No. 2)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 4)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 5)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 6)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

Report and order recommended by Joint Board No. 103, composed of R. O. Self, of North Carolina.

Served—November 27, 1937.

Notice to the Parties

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served on all other parties in interest, within 20 days from date of service shown above, or within such further period as may be authorized for the filing of such exceptions. Otherwise, at the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed by other parties, or the order has been stayed or postponed by the Commission.

[fol. 70] Interstate Commerce Commission

No. MC-86687 (Sub. No. 2)*

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

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*This report also embraces Nos. MC-86687 (Sub. No. 4), MC-86687 (Sub. No. 5), and MC-86687 (Sub. No. 6), all of which are applications by the same applicants seeking authority for extensions of operation.

Submitted—— Decided——

1. Public convenience and necessity found to require extension of operation by applicants as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities over a specified route between Hamlet and Sanford, N. C. Certificate granted.

2. Public convenience and necessity found not to require operations by applicants as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities over specified routes between Sanford and Raleigh, N. C.; between Hamlet and Wilmington, N. C.; between Monroe and Rutherfordton, N. C.; and between Raleigh and Henderson, N. C. Applications denied.

Charles T. Abeles for applicants.
Edgar Watkins, Jr., and W. P. Horton for interveners.

Report and Orders

Recommended by Joint Board No. 103, Composed of R. O. Self of North Carolina

No. MC-86687 (Sub. No. 2)

By application filed February 23, 1937, Legh R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway, of Norfolk, Va., seek a certificate of public convenience and necessity authorizing them to operate as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities between Henderson and Raleigh, N. C., over the following route:

From Henderson, U. S. Highway 1 to Franklinton, N. C.; thence North Carolina Highway 56 to Louisburg, N. C.; thence North Carolina Highway 56 to Franklinton, N. C.; thence U. S. Highway 1 to Raleigh, N. C.; with return trip over the same route and service to all intermediate points which are stations on the railway.

[fol. 71] By other applications filed on the same day, the same applicants seek certificates of public convenience and necessity authorizing them to operate as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities as follows:

No. MC-86687 (Sub. No. 4)

Between Hamlet and Raleigh, N. C., over the following route:

From Hamlet, North Carolina Highway 77 to Marston, N. C.; thence U. S. Highway 1 to Sanford, N. C.; thence U. S. Highways 1 and 501 to Pittsboro, N. C.; thence U. S. Highway 64 and North Carolina Highway 55 to Apex, N. C.; thence U. S. Highway 1 to Raleigh; with return trip over the same route and service to all intermediate points which are stations on the railway.

No. MC-86687 (Sub. No. 5)

Between Hamlet and Wilmington, N. C., over the following route:

From Hamlet, U. S. Highway 74 to Lumberton, N. C.; thence North Carolina Highway 211 to Bolton, N. C.; thence U. S. Highway 74 to Wilmington; with return trip over the same route and service to all intermediate points which are stations on the railway.

No. MC-86687 (Sub. No. 6)

Between Monroe and Rutherfordton, N. C., over the following route:

From Monroe, U. S. Highway 74 to the junction of that highway with North Carolina Highway 27; thence North Carolina Highway 27 to Lincolnton, N. C.; thence North Carolina Highway 150 to the junction of that highway with U. S. Highway 74; thence U. S. Highway 74 to the junction of that highway with North Carolina Highway 120; thence North Carolina Highway 120 to the junction of that highway with U. S. Highway 221; thence U. S. Highway 221 to Caroleen, N. C.; thence by a county road to Ellenboro, N. C.; thence U. S. Highway 74 to Rutherfordton; with return trip over the same route and service to all intermediate points which are stations on the railway.

In accordance with the provisions of the Motor Carrier Act, 1935, the applications were referred to Joint Board No. 103 for hearing and the recommendation of an appropriate order thereon. The cases were consolidated for hear-

ing and will be disposed of in one report. The Southern Motor Carriers Rate Conference, an organization composed of more than 400 members, many of whom claim to operate [fol. 72] in the territory which applicants seek to serve through these proposed operations by motor vehicle, and P. & F. Motor Lines opposed the granting of the applications.

Protestants question the authority of the receivers to file this application, alleging that motor-carrier operation is not authorized by the charter of the corporation, and that they must receive special authority from the Court that appointed them before instituting any legal action. By appropriate court orders, applicants have been appointed receivers of the railway company. Whether they are exceeding their authority is a matter for the determination of the Court that appointed them.

Protestant, the Southern Motor Carriers Rate Conference, has filed a motion requesting that these applications be consolidated with several other applications filed by these applicants and now pending before the Commission. It asks that the consolidated proceeding be referred to an examiner or a different joint board, the order of reference to be determined by the scope of the entire operation. If the operations covered by all the applications are considered as one unified operation, this joint board will not have jurisdiction of the subject matter. Reference of the applications considered in this report were made to this joint board in accordance with the provisions of section 205 of the act. The other applications have not been referred to this board and the motion, therefore, is a matter that must be considered by the Commission.

Applicants now operate motor-carrier service over several routes which parallel the rail lines, and have filed their application for authority under the "grandfather" clause of the act to continue such operation. One such operation is over a route between Hamlet and Monroe.

Applicants desire to establish an auxiliary or supplementary truck service to be coordinated with service by rail in the handling of interstate shipments of less-than-carload freight originating at or destined to stations on the railway. They expect to expedite the movement of less-than-carload shipments by hauling the freight by rail from the shipping point to a point near the destination and transferring it to a truck for completion of delivery. Applicants

expect the institution of this service materially to speed up the handling of less-than-carload freight and also to expedite the movement of carload freight carried in local freight trains by eliminating stops of such trains now necessary in [fol. 73] handling less-than-carload shipments at various stations. In many instances the schedules of local freight trains may be changed so that switching for industries may be performed at times more convenient to the operators of the industries than the present switching service. They do not propose to supplant with trucks the existing rail service, or to transport carload shipments by truck. They believe that this auxiliary service will enable the railway to retain its present traffic and to regain traffic which it formerly carried and contend that such increased traffic as may be gained thereby will not be taken from established motor carriers now operating along the highways proposed to be served. The new business is expected to consist principally of traffic now handled by persons hauling their own freight with their own trucks.

According to applicants' theory, the establishment of the truck service will not injure the present competitive situation of established motor carriers because there is no intention by applicants to handle through freight by truck from and to points beyond the termini of the proposed truck operations or to engage in anything but a truck operation which will be entirely a part of its primary service by rail. They claim the effect of the initiation of the truck service will be no different than if an additional or improved train service should be furnished along the line. However, they do not desire any limitation in such authority as may be granted in this proceeding, which would limit the character of traffic to be handled or would restrict the operation only to the transportation of shipments moving in combined rail and truck service, or to traffic moving by truck only between points on the routes covered by any single application.

Protestants insist that the applicants' purpose in applying for the authority sought is to serve only their convenience and not that of the public; that the proposed service is an attempt to establish a general trucking business as well as a substituted service for the present rail service; that the proposed operations will divert traffic from existing motor carriers to the injury of such carriers and the public; and that the proposed operations will further de-

plete the revenues of the railroad to the injury of the creditors and stockholders thereof. They contend also that the granting of the authority sought will tend to further a monopoly in transportation in the southeastern section of the United States to the detriment of the ship-[fol. 74] ping public; will destroy the inherent advantages of motor transportation; and will be contrary to the policy of Congress as expressed in the act.

Considerable added operating expense to applicants will result from the institution of supplemental truck service, since the truck service is supplemental to rather than a substitution for present rail service. Some economies will result in fuel savings due to the elimination of local stops now necessary in handling less-than-carload freight and in the speeding up of freight train schedules. No reliable estimate of the tonnage which will be carried by truck has been made but, considering all the circumstances, it seems reasonable to conclude that the operation of the trucks will be more economical than the present method of handling less-than-carload shipments by rail; and that the savings will largely offset the additional costs which will be incurred. Applicants' estimate their operating costs for motor vehicles to be approximately 15.2 cents per mile. This estimate takes into consideration most of the necessary elements of such costs and appears to be based upon an operating experience of sufficient length to be reliable. Railway operating revenues for the year ending December 31, 1936, were $30,346,055, net railway operating income, $2,290,583, and gross income including revenue derived from sources other than operations, $3,276,751. Applicants' employes have for several years operated trucks in common carrier service. Such operations are now being conducted over distances aggregating more than 400 miles. The Board is of the opinion that the applicants are fit and able, both financially and as a matter of experience, to secure and maintai proper equipment and to conduct the proposed motor carrier operations in an efficient manner.

Operation Between Raleigh and Henderson

It is proposed to operate two trucks daily in each direction between Raleigh and Henderson, including service on a highway which parallels a branch line of the railway between Franklinton and Louisburg. Southbound, one truck

will leave Henderson at 6:00 A. M., arriving at Raleigh at 10:00 A. M., and another leaving Henderson at 6:15 A. M. will arrive at Raleigh at 9:50 A. M. Northbound, one truck will leave Raleigh at 1:30 A. M., arriving at Henderson at 5:00 A. M., and a second will leave Raleigh at 1:45 P. M., arriving at Henderson at 5:00 P. M. At present applicants [fol. 75] operate a freight car loaded at Hamlet with freight from southern and middle western origins consigned to Raleigh and a similar car from Hamlet to Henderson. Under the proposed truck operation the car loaded at Hamlet for Raleigh would also contain less-than-carload freight for all points between Raleigh and Henderson exclusive of Henderson, and these shipments would be transferred from the car to the truck leaving Raleigh at 1:30 A. M., making possible the delivery of such freight at intermediate points early in the morning.

The present train service consists of only three local trains per week in each direction. On the days when the northbound train is not operated, traffic is carried to Henderson by through freight train, then back-hauled on the southbound local train to points between Raleigh and Henderson. Similarly, a backhaul is necessary from Raleigh on shipments to intermediate points on the days when the southbound train is not operated. The proposed truck service would expedite these local shipments by several hours. Less-than-carload traffic originating at points between Raleigh and Henderson, consigned to Richmond and Portsmouth, Va., would be carried by truck to Henderson and there loaded on freight trains for destination. A saving of as much as 24 hours would be effected thereby.

The same method of handling shipments from such intermediate points to destinations south of Raleigh would produce a similar result. The proposed service would not reduce materially the number of stops to be made by local freight train at intermediate points on these routes because such trains usually carry carload shipments which would still have to be set off, but the delay at the various stations would be shortened by the elimination of the loading and unloading of less-than-carload freight. This saving of time is of particular importance on the branch rail line between Franklinton and Louisburg. Applicants operate a daily mixed train on this branch which carries passengers and mail.

The following motor carrier service is now in operation over the route in question:

Miller Motor Express of Charlotte, N. C., operates over U. S. 1 between Raleigh and Henderson. The witness for this company testified, however, that although it had the right to do so, it had not heretofore handled interstate shipments originating at or destined to points other than Raleigh.

Motor Transport Company of Raleigh operates a daily service between Raleigh and Richmond over U. S. [fol. 76] Highway 1, serving all intermediate points.

Raleigh-Danville Motor Express of Raleigh operates daily service in each direction between Raleigh and Henderson and also from Franklinton to Louisburg and return, serving all intermediate points on the entire routes covered by this application.

Horton Motor Lines operates daily service in each direction over U. S. Highway 1 between Raleigh and Henderson.

Operation Between Hamlet and Raleigh

The proposed service is over highways paralleling the applicants' main line by rail between Hamlet and Raleigh, with service also to Pittsboro, the terminus of a short branch line. A northbound truck will leave Hamlet at 2:00 A. M., arriving at Raleigh at 7:30 A. M., and a southbound truck will leave Raleigh at 8:30 A. M., arriving at Hamlet at 2:05 P. M. The service to Pittsboro would be accomplished by a loop trip of the northbound truck, leaving the main line at Sanford, passing through Pittsboro, and returning to the main line at Apex. The principal benefit expected to be derived from this truck service would be the expedition of deliveries of less-than-carload freight to intermediate stations, and some improvement in train service on outbound traffic.

Traffic from Portsmouth and Richmond to territory between Raleigh and Sanford now moves to Sanford and then is backhauled to intermediate stations. The truck service will eliminate this back-haul and will make deliveries possible as much as 24 hours earlier than at the present. The use of trucks will expedite the movement of freight originating in Charlotte-Monroe territory and destined to inter-

mediate points on this line by about 24 hours.

The following motor carriers now operate over the routes in question:

Miller Motor Express operates daily service in both directions between Sanford and Raleigh, serving all intermediate points.

Motor Transit Company operates regular daily service in both directions between Raleigh and Sanford, serving all intermediate points on the routes.

Helms Motor Express operates from Charlotte to Raleigh and serves all intermediate points on this route between Aberdeen and Raleigh, daily in both directions. It also operates a call and demand service on LCL freight between Aberdeen and Hoffman, N. C., with service to all intermediate points. No regular [fol. 77] schedules operation is conducted between these latter points.

Atlantic States Motor Lines conducts daily service between Richmond and Columbia, but it was not definitely shown that it serves the intermediate points covered by this application. The witness for this carrier stated that it has a line of trucks that serve all the territory in the vicinity of Charlotte and Monroe and if this service includes operation over the routes covered by this application, but is rendered irregularly on call and demand.

There is daily service between Raleigh and Sanford in both directions by at least two motor carriers, but there is no showing of any regular service between Hamlet and Sanford.

Operation Between Hamlet and Wilmington

The proposed operation between Hamlet and Wilmington parallels the rail line between these two points. A truck will leave Wilmington at 7:00 P. M., arriving in Hamlet at 12:30 A. M., and returning will leave Hamlet at 1:30 A. M., arriving at Wilmington at 6:35 A. M. It is expected that this service will greatly relieve the local freight trains handling less-than-carload shipments from and to the 24 intermediate stations on this route by eliminating train stops at many of these points. The present train service consists of two trains from Wilmington to Hamlet, one of

which handles primarily petroleum on a fast schedule, the other handling general traffic. This latter train is supposed to make connection at Hamlet with northbound trains handling through freight, but under present conditions the connection is frequently missed. The truck service is expected to eliminate this occurrence and will permit dispatch of less-than-carload shipments from Wilmington at a later hour than is now possible.

From Hamlet to Wilmington only one freight train per day is operated, which leaves Hamlet at 8:00 P. M., arriving at Wilmington at 1:00 A. M. Truck service is expected to reduce greatly the time of handling less-than-carload shipments destined to Laurinburg, Lumberton, Pembroke, Bladenboro, and Wilmington, which are set-out points for merchandise cars. Much of the freight loaded in these cars comes from points west of Hamlet, principally from Monroe and Charlotte. It is contemplated that train schedules between Charlotte and Hamlet will be revised by leaving Charlotte at a later hour than is at present possible and [fol. 78] effecting a saving of 24 hours in delivery time.

On shipments from the North which are scheduled to reach Hamlet at 5:15 P. M., the connection with the present train service from Hamlet to Wilmington is often missed. Truck service is expected to remedy this delay and delivery may be expedited in some cases by as much as 24 hours. It is estimated that an average of 12 local train stops per day will be eliminated by the use of trucks which, at a fuel saving at $1.50 per stop, would result in a daily economy amounting to $18.00. It is estimated that the truck service will cost $910 per month.

The following truck service is now in operation over the routes in question:

P. & F. Motor Express operates between Wilmington and Charlotte over U. S. Highway 74, paralleling the applicants' proposed service except from points between Bolton and Laurinburg, N. C., between which points the new operation is over U. S. Highway 211 rather than U. S. Highway 74. Daily service is provided in both directions by this carrier.

Miller Motor Express operates daily service between Charlotte and Wilmington over U. S. Highway 74 with a daily schedule from Laurinburg to Fayetteville, N. C., and return. This carrier serves all points between

Lumberton and Bolton on U. S. Highway 211 in addition to all other intermediate points on U. S. Highway 74.

H. H. Hunt & Company operates daily service in both directions between Wilmington and Fayetteville, and Wilmington and Lumberton. It operates from Bolton to Lumberton over U. S. Highway 211 and serves all intermediate points between Lumberton and Wilmington.

Operation Between Monroe and Rutherfordton

The proposed service between Monroe and Rutherfordton will be over highways paralleling the rail line between these points, with an operation between Ellenboro and Caroleen, the latter point being on a branch line. Only less-than-carload shipments to and from stations on the railway which are on the routes in question will be transported by truck. Shipments moving solely between local points on this route will be transported wholly by truck more frequently than over any other proposed route. A truck will leave Rutherfordton at 3:00 P. M., arriving in Monroe at 9:35 P. M., daily, and will leave Monroe at 12:01 A. M., arriving at Rutherfordton at 6:20 A. M. Only one schedule each way per day would be operated.

[fol. 79] The benefits to the railway expected to result from the use of truck service consist principally in the elimination of freight train stops at intermediate stations for the handling of less-than-carload freight and a material saving in time due to the elimination of loading and unloading of less-than-carload shipments at points where the freight trains will continue to stop. At present applicants' local train leaves Bostic Yard, a point about 12 miles east of Rutherfordton, at 4:00 P. M., and is scheduled to arrive at Charlotte at 8:35 P. M. This hour of departure of the train from Bostic is necessary in order to handle shipments from intermediate points which are loaded late in the day, this being of particular importance to cotton mills located at Shelby, Ellenboro, and Cherryville, N. C. Consequently this train is often late and misses connection with other rail lines at Charlotte. A substantial volume of such interchange traffic is regularly handled. The schedule of the truck operation will follow closely that of the train in order to relieve it of its present

less-than-carload service at local intermediate points and expedite its arrival at Charlotte.

A comparable situation exists in connection with the train service between Monroe and Charlotte. Switch-train service leaving Monroe at 3:30 A. M. and due at Charlotte at 4:30 A. M. often misses connections with other lines at Charlotte, delaying the delivery of shipments by as much as 24 hours. Truck service will relieve the switch-train of deliveries at local stations and expedite its movement so that missed connections may be avoided.

At present a local freight train, No. 95, is scheduled to leave Charlotte at 6:00 A. M. for Rutherfordton. This train's departure is dependent upon the arrival of the switch-train from Monroe. It handles carload shipments arriving at Charlotte from Monroe and destined for points beyond Charlotte. Under this schedule merchandise shipments destined to points between Charlotte and Rutherfordton reach their destinations late in the afternoon. The truck is expected to make early morning delivery of these shipments possible and will give early morning delivery of freight carried in package cars to break-bulk points such as Lincolnton, Shelby, and Ellenboro. Cars are loaded at Monroe for Charlotte, Shelby, Lincolnton, and Cherryville, and delivery of that freight is at present effected late in the afternoon or the next morning, whereas transporta-[fol. 80] tion by truck would permit as much as a 24-hour saving on these deliveries. The truck service, by eliminating local stops of the Monroe-Charlotte local freight train, will expedite the movement of shipments moving from Monroe to Charlotte for interchange with connecting lines, and the faster schedule will assure connections at Charlotte on interchange shipments.

Applicants' traffic in the territory is particularly heavy, requiring a considerable amount of local train service. In addition to the switch-train service between Monroe and Charlotte there are two round trips of through freight service. Through service as well as local service is rendered between Charlotte and Bostic. Switch-train service is also rendered out of Lincolnton and Shelby to points in their immediate vicinity. This complicated operating condition is cited by applicants as showing that conditions here are particularly well adapted to the proposed coordination of rail and truck service.

Applicants' truck schedule on this operation is not arranged so as to afford close connections with its present truck service between Monroe and Hamlet. This fact is stressed by applicants as indicating that coordinated truck and rail service is the purpose of this operation rather than the establishment of through truck service by coordinated schedules between the various operations proposed in their several pending applications. However, it is only reasonable to believe that, in this case as in any other, the question of whether or not local shipments will be transported partly by rail, to set-out points for instance, or will be transported from origin to destination entirely by truck will be determined by principles of economy and sound operating practice rather than by any iron-clad determination to transport shipments partly by rail at any cost or inconvenience.

Applicants' present truck service between Monroe and Hamlet has been of great benefit to a hardware company at Monroe in handling shipments from Monroe. The service between Monroe and Rutherfordton is desired by this firm to expedite shipments moving to Rutherfordton and points between Rutherfordton and Charlotte, as well as shipments which move from Monroe to Charlotte for interchange with other rail carriers. This company uses truck service to some extent now, but does not always find such service adequate for its particular purposes. It is not unusual for shippers to desire additional transportation facilities. They usually favor the same regardless of what [fol. 81] effect their initiation might have upon existing carriers. This testimony is not sufficient to convince the Board either of a need for additional service or of the inadequacy of the present service now in operation.

The following motor carriers are now in operation, serving the territory covered by this application:

P. & F. Motor Express operates daily service in each direction between Charlotte and Monroe with as many as three round trips between these points when the traffic demands.

Barnwell Brothers, Incorporated, serves all points on North Carolina Highway 27 between Charlotte and Lincolnton and on North Carolina Highway 15 between Lincolnton and Shelby, daily in both directions. The same service is performed to all points between Shelby

and Rutherfordton with respect to Henrietta and Caroleen. A witness for the company stated that it serves all cotton factories and mills in the general territory between Charlotte and Rutherfordton.

Horton Motor Lines operates daily service in both directions between Charlotte, Shelby, and Rutherfordton, and from its terminal at Shelby performs daily pick-up service to and from all points in contiguous territory.

Atlantic States Motor Lines, Inc., conducts daily service from Charlotte, west to Shelby and Lincolnton on North Carolina Highways 27-A and 150, and serving all points proposed to be served by the applicants in this application, and also furnishes a regular service between Charlotte and Monroe over Highway No. 74.

Several motor carriers conduct scheduled service over all of the routes involved in these applications, except between Hamlet and Sanford, where only an irregular call and demand service is maintained. Practically all of these motor carriers would be willing to interchange traffic with applicants and thereby effect a coordinated rail and truck service. Applicants insist that a proper and efficient coordination of rail and motor carrier service along the routes involved can be accomplished and maintained only by the establishment of a truck service owned by and operated principally for the benefit of the railway. They look with disfavor upon a coordinated rail and truck service established through interchange with independent common carriers for the reason that the railway might be required by the use of such service to short-haul itself.

The declared policy of Congress set forth in section 202 (a) of the act is to "improve the relations between, and the coordination of transportation by and regulation of, motor [fol. 82] carriers and other carriers." It seems apparent that the coordination of transportation which Congress intended is that between carriers operating different kinds of transportation facilities. A rail carrier has no inherent right to change the means of transporting its traffic from its rails to motor vehicles. In seeking to do so, it must assume the burden of showing that the establishment of motor-carrier service by it is required by public convenience and necessity to the same extent that is required of any

other applicant for such authority. A railroad may properly supplement its train service by motor vehicle operations if it can be shown that traffic may be handled thereby in a more economical and efficient manner. However, it has no greater right to establish such a service by invading territory already adequately served by an established motor carrier than would another motor carrier. See *Pennsylvania Truck Lines, Inc.—Control—Barker*, 1 M. C. C. 101, 5 M. C. C. 9 and 49, and *Texas & P. M. T. Co.—Purchase—Johnson*, 5 M. C. C. 89. If these applications should be approved, the new operations would be competitive to some extent, with established motor carriers. Furthermore, it is possible that other railroads operating in this general territory or elsewhere could show that public convenience and necessity to the same extent requires the establishment of like supplemental services along their rail lines. The effect of the precedent, established by the granting of these applications, might be far-reaching both upon the national transportation system and upon traffic conditions on the highways of the country.

The Board is of the opinion that the present motor carrier service over the routes involved in these applications, except as between Hamlet and Sanford, is reasonably adequate for the needs of the public; and establishment of the services proposed herein would inevitably react to the detriment of existing motor carriers by a further division of the available traffic. It would also place upon the highways additional motor trucks where perhaps too many are already operated. If motor-carrier service is better than that offered by the railway on local less-than-carload freight, such shipments should move by truck rather than by rail, or coordinated rail-truck service should be established by utilizing the present rail and truck facilities.

The Joint Board finds that public convenience and necessity require the operation of the service proposed by ap-
[fol. 83] plicant between Hamlet and Sanford over U. S. Highway 1; that applicants are fit, willing, and able properly to perform the duties of a common carrier by motor vehicle; and that a certificate should be granted authorizing such operation.

The Board further finds that the applicants have failed to show that public convenience and necessity require the operation of the service proposed by the applicants over the other routes herein considered; and that the applica-

tions, except as to proposed service between Hamlet and Sanford, should be denied.

It is recommended that the appended orders be entered.

By Joint Board No. 103.

R. O. Self.

Recommended by Joint No. 103, composed of R. O. Self of North Carolina.

R. O. Self.

Order

At a Session of the Interstate Commerce Commission, Division 5, effective on the — day of ——, A. D. 1937.

No. MC-86687 (Sub. No. 2)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 4)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 5)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 6)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

Investigation of the matters and things involved in this proceeding having been made, said applications upon due notice having been heard by Joint Board No. 103, which board has made and filed a report herein, containing its [fol. 84] findings of fact and the conclusions thereon, which report is hereby made a part hereof, and said proceeding having been duly submitted:

It is ordered, That upon full compliance with all requirements of sections 215 and 217 of the Motor Carrier Act, 1935, and with the rules and regulations promulgated by the Commission thereunder, a certificate of public convenience and necessity be issued to Legh R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway of Norfolk, Va., authorizing them to operate in interstate or foreign commerce as a common carrier by motor

vehicle of general commodities, serving all intermediate points which are stations on the Seaboard Air Line Railway, between Hamlet, N. C., and Sanford, N. C., over the following route:

From Hamlet, North Carolina Highway 77 to Marston, N. C.; thence U. S. Highway 1 to Sanford.

It is further ordered, That the above-described certificate shall be issued upon the condition that the operations authorized thereunder shall be conducted in accordance with all rules, regulations, and requirements relating thereto issued by the Commission under the Motor Carrier Act, 1935.

It is further ordered, That the application in MC-86687 (Sub. No. 4) in all other respects be, and it is hereby, denied and that the applications in MC-86687 (Sub. No. 2), MC-86687 (Sub. No. 5), and MC-86687 (Sub. No. 6) be, and they are hereby, denied.

And it is further ordered, That this order shall be effective on —— ——.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT L

17 MCC-413
Interstate Commerce Commission

No. MC-86687 *

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers)

Motor Operation—Gaston-Garrett, S. C.

Submitted April 20, 1939 Decided July 11, 1939

Public convenience and necessity found to require [fol. 85] operations by applicants as a common carrier by motor vehicle, in interstate or foreign commerce, of gen-

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* This report also embraces the other applications in No. MC-86687, Sub. Nos. 1 to 10 inclusive, and Subs. Nos. 15 and 18 described in the appendix hereto.

eral commodities, between certain points in Virginia, North Carolina, South Carolina and Florida, over specified routes. Certificate granted on conditions.

Charles T. Abeles, Murray Allen (Sub. No. 7 only), *W. J. Oven* (Sub. Nos. 9, 10, and 18 only), *W. R. C. Cocke* and *James F. Wright* for applicants.

Edgar Watkins and *N. A. Turner* (No. MC-86687 and Sub. No. 1 only), *W. P. Holden* (Sub. No. 2 only), *William T. Callahan* (Sub. No. 3 only), *Stanton Walker, Leo P. Kitchen* and *Dan R. Schwartz* (Sub. Nos. 9, 10 and 18 only), *J. A. Bliss* (Sub. Nos. 9, 10 and 18 only), *H. C. Loland* (Sub. Nos. 9 and 10 only), *J. C. Steadman* and *McCarthy Crenshaw* (Sub. No. 18 only) for protestants.

Clarence M. Mulholland for Railway Labor Executives Association, intervener.

Report of The Commission, Division 5, Commissioners Eastman, Lee, and Rogers

By Division 5:

The title proceeding herein and the applications in Nos. MC-86687 (Sub. Nos. 1 and 8) were referred to Joint Board No. 188 and the other Sub. Number proceedings were referred as follows: Sub. Nos. 2, 4, 5, 6 and 15 to Joint Board No. 103; Sub. No. 3 to Joint Board No. 2; Sub. No. 7 to Joint Board No. 7; and Sub. Nos. 9, 10 and 18 to Joint Board No. 205. Hearings have been held before the appropriate joint boards and recommended orders issued. The hearings in Sub. Nos. 2, 4, 5 and 6 were consolidated before Joint Board No. 103 and those in Sub. Nos. 9 and 10 before Joint Board No. 205.

Exceptions were filed by protestants to the orders recommended by the joint boards in the title proceeding and in Sub. Nos. 3, 4, 8 and 18, and applicants replied. Applicants filed exceptions to the orders recommended by the joint boards in Sub. Nos. 1, 2, 4, 5, 6 and 7, and both applicants and protestants filed exceptions to the recommended orders in Sub. Nos. 9 and 10 and applicants replied. No exceptions were filed to the order recommended in Sub. No. 15 but we stayed the order. The parties have been heard in oral argument with respect to the title proceeding and Sub. Nos. 1 to 8, inclusive, which were consolidated therewith for that purpose, and oral argument has also been

held in Sub. No. 18. Since applicants are the same in all [fol. 86] the proceedings and the issues are similar the cases will be disposed of in one report. Our conclusions differ from those recommended by the joint boards in Sub. Nos. 1, 2, 4, 5, 6 and 7.

Applicants are the Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, receivers). By the application in the title proceeding, filed February 23, 1937, they seek a certificate of public convenience and necessity authorizing operations as a common carrier by motor vehicle in the transportation of general commodities between Gaston and Garnett, S. C., over the route shown in the appendix, serving stations on the line of the Seaboard Air Line Railway, hereinafter called the Railway. By the other applications, filed respectively on the dates shown in the appendix, applicant seeks similar authority between other points in South Carolina, Virginia, North Carolina and Florida, over specified routes, as described in the appendix, serving all intermediate and certain off-route points, which are stations on the line of the Railway. All of the applications, except Sub. Nos. 15 and 18, were opposed by the Southern Motor Carriers Rate Conference, and certain of them by individual motor carriers and others,* as shown in the margin. The Brotherhood of Railway Trainmen oppose the application in Sub. No. 3 and the Railway Labor Executives Association intervened in all of the proceedings.

Two jurisdictional questions, raised by protestants, will be considered first. One relates to the authority of the receivers of the Railway to conduct motor carrier operations and our jurisdiction to grant authority therefor, and the other is whether the applications were assigned for hearing before proper joint boards. There appears to be no ques-

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* New South Express Lines in the title proceeding and Sub. No. 1; P. & F. Motor Lines in Sub. Nos. 2, 4, 5, and 6; Acme Freight Lines, Cooper Truck Lines, Holstein and Son, Goodall Brothers Truck Line, Blue's Truck Lines, and Union Bus Company in Sub. Nos. 9 and 10; McJunkin Truck & Bus Line in Sub. No. 18; K. & L. Transportation Company, Inc., L. & L. Freight Lines, Inc., and R. C. Motor Lines, Inc., in Sub. Nos. 9, 10, and 18; and Great Southern Trucking Company, St. John's River Line Company, and Tamiami Trail Tours, Inc., in Sub. Nos. 9, 10, and 18.

tion as to the appointment of the receivers by a court of appropriate jurisdiction. As protestants contend, the receivers, in the conduct of the Railway's operations, are limited by the authority conferred by the corporation charter, but the question as to the proper scope of the corporate power is one which this Commission is not required to determine in proceedings such as those under consideration. A contention similar to that of protestants herein was considered in *Claiborne-Annapolis Ferry Co.* v. *United States*, 285 [fol. 87] U. S. 382. There a railroad company sought a certificate from this Commission under section 1 (18) of Part I of the Interstate Commerce Act, authorizing the construction and operation by it of a ferry for the transportation of passengers across Chesapeake Bay. The Supreme Court said:

> Whether the railway company has corporate power to operate the proposed ferry is a question which cannot be considered in this proceeding. We think Congress never intended to impose upon the Interstate Commerce Commission the duty of determining matters of this nature before granting or withholding assent to the construction of an extension.

As previously noted, the application in the title proceeding and the first seven sub. number applications were filed on the same date. Except for the route between Gaston and Garnett, and one between Monroe and Rutherfordton, N. C., included in the Sub. No. 6 application, the proposed routes included in those applications join, and the Monroe-Rutherfordton route connects with a route between Monroe and Hamlet, N. C., in respect of which applicants have filed with us an application for registration in Docket No. MC-28984. Hamlet is shown as a termini of the Hamlet-Columbia, S. C., route included in the Sub. No. 3 application. Other than the Sub. No. 3 case (Hamlet-Columbia route) and the Sub. No. 7 case (Richmond, Va.-Henderson, N. C., route), the applications covering routes solely between points in North Carolina or South Carolina, respectively, were set down for hearing before joint boards composed solely of members from such States. Protestant, Southern Motor Carriers Rate Conference, at the several hearings moved for discontinuance thereof, and consolidation of the various proceedings for hearing before a joint board composed of mem-

bers from Virginia, North Carolina and South Carolina, contending that operations in three States were involved. Protestants also filed a similar motion with us, which was denied, and have argued the question orally. Applicant, on the other hand, contended that the South Carolina and North Carolina routes, respectively, except the McBee-Sumter, S. C., route (Sub. No. 1 case) were exempt from the certificate requirements of section 206 (a) of the act, since applicants had been granted certificates therefor by North Carolina and South Carolina. Applicants, at the time of hearing, had received no certificate authorizing operations between McBee and Sumter. It may be noted also that protestants filed similar motions for consolidation of the proceedings involved in Sub. Nos. 9, 10 and 18, arguing [fol. 88] that all of the applications should be heard together before an appropriate joint board or an examiner.

The particular provisions of the act upon which protestants rely are contained in section 205 (b) and, so far as here pertinent, read as follows:

> The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three states * * * refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations: Applications for certificates, permits or licenses. * * * The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are proposed to be conduced:

It will be noted that the words "such matter" are in the singular, and clearly relate back to the preceding language, "any of the following matters arising in the administration of this part with respect to such operations." Thus understood, it seems beyond argument that it relates to any one of the matters mentioned, rather than to a number of them, and hence refers to an individual application. In other words, the language "motor-carrier or brokerage operations involved in such matter" clearly means "motor-carrier or brokerage operations involved in such application." If such application covers an operation confined within the

boundaries of a single State, it is obviously the "matter" which we are required to refer to a joint board composed solely of one member from that State.

It is true, as protestants point out, that a possible result of granting the applications included in the title proceeding, and Sub. Numbers 1 to 8, which include routes between Richmond and Columbia, would be a unified service in three States, and that applicants may have intended such result when the several applications were filed. However, it is manifestly impossible to accurately predict such a result when applications for certificates or permits are filed with us, or to determine the existence of such an intent on the part of the party filing the applications. In the majority of cases such a result would become apparent only upon hearing the applications. On the other hand, the hearing or hearings might disclose that a unified operation was not contemplated, even though the same party filed a number of applications covering operations in adjoining States. In the latter event, if we had assigned the applications before [fol. 89] a two or three-member board, as the case might be, in advance of any certain knowledge that a unified operation in more than one State was contemplated, we would be under the necessity of reassigning the applications before the proper joint boards.

We conclude that there is no legal basis for the opposition raised by protestants to the composition of the joint boards which heard the several applications. Protestants, however, in addition to the jurisdictional argument, also contend that, due to the assignment of the applications before separate joint boards, an incomplete picture of the contemplated operations has been presented. In this connection they refer to the refusals of certain of the joint boards to receive evidence relating to service over routes other than the particular ones embraced in the applications before such joint boards. However, we now have the entire situation presented by the several applications before us in all of its aspects, following full and complete hearings, and we perceive no reason why we cannot properly consider and dispose of the applications on their merits upon the records made. Our attention has been directed to no instance wherein the adverse ruling of the joint board respecting evidence relating to operations over other than the route before the board has been prejudicial to protestants.

The proposed routes parallel the lines of the Railway, and applicants propose to substitute truck service for the existing less-than-carload freight service of the Railway between stations on its lines. They stress the fact that there will be no reduction in the number of trains now being operated, but they do assert that stops at other than set-out points will be greatly reduced, and that such stops will be eliminated in many instances. In a number of cases existing train schedules will be revised to permit train movements at night, thus affording delivery of less-than-carload shipments early in the day. Applicants assert that at points where trains would continue to stop, material saving in time would be effected by relieving train crews of the necessity of handling the less-than-carload shipments.

The proposed truck schedules are to be so coordinated with applicants' regular train service from important origins as to expedite delivery by as much as 36 hours in some instances. The bulk of the less-than-carload movement is to and from small points intermediate to larger terminals and is now carried on local trains. The volume of [fol. 90] such traffic is said to be insufficient to warrant frequent train service and the large number of stops necessarily slows the schedules, subjecting the traffic to delays which are annoying to shippers and receivers, and detrimental to the traffic of the Railway and which cannot be eliminated except by the addition of trains at an expense which is not warranted by the amount of traffic involved.

Applicants expect to continue to utilize rail transportation for most of the line-haul between the points served by them, but less-than-carload shipments are to be transferred to trucks at stations near the final destination of the shipments. By relieving local trains from the handling of such shipments except to and from points where cars are set out, applicants expect to expedite local train schedules and speed up the handling of carload traffic. In that way they expect to eliminate failures to make connecting train schedules, which are now said to be frequent occurrences. The change to night schedules where possible is said to be favored by industries located on the Railway, since day switching interferes with plant operation. Substantial savings in fuel are anticipated through elimination of station stops and reduction of the number of cars in local trains.

No. MC-86687 and (Sub. Nos. 1 to 8) —

Between Gaston and Garnett, S. C.—In the proposed service between Gaston and Garnett, the motor truck would start at Estill, S. C., 10 miles north of Garnett, and maintain one round-trip schedule per day, leaving Estill on the northbound trip at 7:00 A. M., arriving at Gaston at 10:15 A. M., Garnett at 1:55 P. M., and returning to Estill at 2:30 P. M. Rail cars carrying less-than-carload traffic from points north of Garnett consigned to stations on the route will be set out at Swansea, North, Denmark and Fairfax, S. C., and cars from southern points will be set out at Estill, Fairfax and Denmark. The proposed route is about 96 miles in length and about 15 stations are located thereon, in addition to the set-out points just named. Applicants propose to distribute the less-than-carload traffic from the set-out points to the other stations. The schedules of the local train now making deliveries at points on the route would be changed to a night operation, thus affording shippers of carload freight between Savannah, Ga., and Columbia, S. C., the advantage of overnight service, and which would also make possible later loadings of local freight trains. Perishable traffic will benefit through later loadings for earlier delivery to eastern markets.

[fol. 91] Applicants estimate that about 14 stops of the local freight train per day would be eliminated by the proposed service, which, at an estimated cost of $1.50 per stop, would be equivalent to a monthly saving of $546, as compared with the estimated cost of truck operation of $350 per month.

The proposed route is now served by certain motor carriers as follows: The New South Express Lines operate between Swansea and North, a distance of 9 miles, and also serves the intermediate point of Woodward, S. C. The Nilson Motor Express of Walterboro, S. C., operates between Denmark and Columbia, 35 miles, serving all intermediate points. The same carrier also operates between Walterboro and Augusta, Ga., in which operation it crosses the proposed route at Fairfax, where it interchanges traffic with the Fleming Truck line of Savannah, which latter carrier operates between Fairfax and Savannah for about 27 miles of the considered route. The Lowe Transfer Company of Aiken, S. C., operates between Fairfax and Olar, S. C., for a distance of about 18 miles.

McBee to Sumter, S. C.—The route sought by the Sub. No. 1 application is 134 miles long, and over highways paralleling a branch line of the Railway to Hartsville and Darlington, S. C. At Hartsville another branch extends to Sumter and Timmonsville, S. C. The present local freight train schedules permit departures from McBee at 9:55 A. M., arrival at Hartsville at 10:50 A. M., and departure therefrom at 10:55 A. M., with arrival at Timmonsville at 12:10 P. M. Another local train leaves Hartsville at 11:15 A. M. and arrives at Sumter at 1:15 P. M. A return train leaves Hartsville at 11:00 A. M. and arrives at Darlington at 11:40 A. M. In the proposed truck schedule the vehicle would leave McBee at 6:00 A. M., proceed via Timmonsville, Hartsville and Sumter, and return to Bishopville, S. C., a station on the Hartsville-Sumter branch of the Railway, from whence it would proceed to McBee via Darlington. Under the present rail operation shipments over applicants' main line at McBee arrive at Sumter at 1:15 P. M. or later, whereas under the proposed truck operation it is anticipated that a departure from McBee at 6:00 A. M. would permit arrival at Sumter at 8:05 A. M., with corresponding reductions in time at the other points on the proposed route. Applicants contend that, due to the local train carrying passengers and mail in addition to freight, the schedule cannot be changed to conform [fol. 92] primarily to the needs of shippers of freight. Additional train service is not justified, due to the light volume of traffic in the territory.

The New South Express Lines operate a truck daily from Sumter to Cheraw, S. C., via Bishopville and Hartsville, and provide daily service to Darlington and all other points on the proposed route except Lamar, S. C. Carroll Jordan, of Hartsville, provides regular route service to all of the considered points. An irregular common carrier service is furnished by six other truck lines. Some 15 or more additional truck lines operate in the territory surrounding Hartsville.

The joint board recommended denial of this application because of the light volume of traffic involved and because the established motor carrier service in the territory was adequate. The board also predicated its recommended denial partly on applicants' failure to demonstrate that operating economies would result from the proposed operation.

On exceptions, applicants contend that the volume of less-than-carload traffic to and from points on the proposed route is sufficient to justify the operation of one round trip per day. They point out that in 1936, 685 tons of less-than-carload traffic moved into Sumter and 223 tons moved out from that point; that Bishopville originated or terminated 503 tons, Darlington 625 tons, Timmonsville 440 tons, and Lydia 27 tons, or a total of about 2,503 tons of less-than-carload traffic. They assert that it would be difficult to determine whether the proposed service would be profitable in and of itself, and they argue that benefits resulting to shippers from the improved service are sufficient to justify the authority sought, without demonstrating that operating economies would result therefrom. Their reasons for refusing to utilize existing motor-carrier service on the various routes will be hereinafter discussed.

Between Raleigh and Henderson, N. C.—Applicants propose to operate two trucks daily in each direction between Raleigh and Henderson, including service paralleling a branch line of the railway between Franklinton and Louisburg. In the southbound operation a truck would leave Henderson at 6 A. M. and arrive at Raleigh at 10 A. M. Another truck would leave Henderson at 6:15 A. M. and arrive at Raleigh at 9:50 A. M. In the northbound operation one truck would leave Raleigh at 1:30 A. M. and arrive at Henderson at 5 A. M., and a second truck would leave Raleigh [fol. 93] at 1:45 P. M. and arrive at Henderson at 5 P. M. At the present time, applicants operate a freight car loaded at Hamlet, N. C., with traffic from southern and middle western origins, consigned to Raleigh, and another car consigned to Henderson. Under the proposed truck operation the car loaded at Hamlet for Raleigh would also contain less-than-carload freight for all points between Raleigh and Henderson, exclusive of the latter point, and would be transferred to the truck leaving Raleigh at 1:30 A. M., making possible delivery of such freight at intermediate points early in the day. The present train service consists of three local trains per week in each direction between the considered points. When the northbound train is not operated, traffic is transported to Henderson by through freight train and then back-hauled by the southbound local train to points between Raleigh and Henderson. A back-haul is also necessary from Raleigh to intermediate points on the days when

the southbound train is not operated. Applicants expect to expedite these local shipments through the proposed service. On less-than-carload traffic originated at points between Raleigh and Henderson and consigned to Richmond and Portsmouth, Va., applicants expect to save about 24 hours' time through transporting the traffic to Henderson and forwarding from that point by freight trains.

The Miller Motor Express of Charlotte, N. C., operates over U. S. Highway 1 between Raleigh and Henderson. However, it appears that the company has never handled interstate traffic originating at or destined to points other than Raleigh. The Motor Transport Company of Raleigh operates a daily service between Raleigh and Richmond over U.S. Highway 1, serving all intermediate points. The Raleigh-Danville Motor Express of Raleigh operates daily trips in each direction between Raleigh and Henderson, and also between Franklinton and Louisburg, serving all intermediate points. The Portland Motor Lines operate a daily service between Raleigh and Henderson.

Between Hamlet, N. C., and Columbia, S. C.—Applicants' present rail service between Hamlet and Columbia consists of one local freight train southbound from Hamlet at 6:30 P. M., which is scheduled to arrive at Columbia at 11:35 P. M., and a northbound train which leaves Columbia at 7:00 P. M. and is due in Hamlet at 10:00 P. M. These two trains provide all main-line service except between Hamlet [fol. 94] and Cheraw, S. C., where local service is provided by a switching train. When there is a heavy movement of traffic the southbound train is frequently late and the northbound train often arrives at Hamlet too late to make connections with through northbound trains carrying perishable commodities. This, in turn, delays the delivery of freight to eastern and middle-western markets by as much as 24 hours. In the proposed truck service, the vehicle would leave Columbia at 7:00 P. M. and arrive at Hamlet at 11:20 P. M. On the return movement the truck would leave Hamlet about 1:00 A. M. and follow the main line of the railway to Cheraw, whence it would parallel a branch line operated by the Railway to Pageland and Jefferson, S. C., the latter point a terminus of another branch line. For the remainder of the trip the truck would parallel the main line to Columbia, where it is scheduled to arrive at 6:10 A. M. Through the proposed service applicants ex-

pect to eliminate a number of stops at small intermediate stations and to avoid failures to make connections at Hamlet with the through northbound trains.

In protestants' exceptions to the order of the joint board recommending granting the authority sought in the Sub. No. 3 application, they point out that in the hearings on the title proceedings and in Sub. Nos. 1, 2, 4, 5 and 6, it was disclosed that three motor carriers now operate between a number of points on the route between Hamlet and Columbia and that one carrier served the entire route. Protestants, therefore, contend that there is ample service over the proposed route. However, the service of the other motor carriers is entirely by motor vehicle, while the proposed service contemplates either a prior or subsequent haul over the Railway.

Between Hamlet and Raleigh, N. C.—In the proposed service between Hamlet and Raleigh, applicants' schedule would afford departure from Hamlet at 2:00 A. M. with arrival at Raleigh at 7:30 A. M., departure from Raleigh at 8:30 A. M., and arrival at Hamlet at 2:05 P. M. Service would be afforded to Pittsboro, N. C., on a short branch line, by leaving the principal route at Sanford, N. C., serving Pittsboro, and returning to the route at Apex, N. C. Traffic from Portsmouth and Richmond to the territory between Raleigh and Sanford now moves to Sanford and is back-hauled to intermediate points. The proposed service would eliminate the back-haul and applicants expect that it will speed up delivery by as much as 24 hours.

[fol. 95] The Miller Motor Express and the Motor Transit Company operate daily service in both directions between Sanford and Raleigh, serving all intermediate points on the route. The Helms Motor Express operates from Charlotte to Raleigh, serving all intermediate points on the route between Aberdeen and Raleigh, and a call-and-demand service on less-than-carload freight between Aberdeen and Hoffman, N. C., serving all intermediate points. The Atlantic States Motor Lines operate daily service between Richmond and Columbia, but it is not clear that it serves intermediate points. There is no showing of any regular motor-carrier service over the route between Hamlet and Sanford.

Between Hamlet and Wilmington, N. C.—The schedule of this operation would provide departure from Wilmington

at 7:00 P. M., arrival at Hamlet at 12:30 A. M., departure therefrom at 1:30 A. M., and return to Wilmington at 6:35 A. M. The present train service consists of two trains from Wilmington to Hamlet, one of which transports principally petroleum on a through schedule. The other train handles general traffic and is supposed to afford a connection at Hamlet with northbound through trains, but at present frequently fails to make this connection. The proposed service is expected to eliminate delays due to such failure. Applicants contemplate revising train schedules between Charlotte and Hamlet to afford a later departure from Charlotte than is possible at present, and it is anticipated that about a day's time in delivery will be saved. Applicants also expect to save about $18 per day through the elimination of local train stops, and that the truck service in the Hamlet to Wilmington operation will cost about $910 per month.

The route between Hamlet and Wilmington is now served by three motor carriers. The P. & P. Motor Express and the Miller Motor Express operate between Charlotte and Wilmington over U. S. Highway 74. The former carrier parallels applicants' proposed service except at points between Bolton and Laurinburg, N. C. The latter carrier provides a daily service from Laurinburg to Fayetteville, N. C., and serves all points between Lumberton, N. C., and Bolton, as well as all intermediate points on U. S. Highway 74. The H. H. Hunt & Company operates a daily service between Wilmington and Fayetteville and between Wilmington and Lumberton. This carrier also operates between Bolton and Lumberton, and serves all intermediate points between the latter point and Wilmington.

[fol. 96] *Between Monroe and Rutherfordton, N. C.*—Applicants expect to transport shipments between local points along this route by truck more frequently than over the other proposed routes. The proposed truck schedule affords a departure from Rutherfordton at 3:00 P. M. and arrival in Monroe at 9:35 P. M., and on the return trip a departure from Monroe at 12:01 A. M., with arrival at Rutherfordton at 6:20 A. M. In the existing freight train service the local train leaves Bostick Yard, N. C., 12 miles east of Rutherfordton, at 4:00 P. M. and is scheduled to arrive at Charlotte at 8:35 P. M. The schedule has been fixed in order to handle shipments for cotton mills at

Shelby, Ellenboro and Cherryville, N. C. As a result, the train frequently arrives at Charlotte too late to make connection with other lines at that point, where a substantial volume of interchange traffic is handled. A similar situation is said to exist in the present train service between Monroe and Charlotte. Applicants anticipate that the proposed truck service, through the elimination of local stops of the Monroe-Charlotte local train, will expedite the movement of traffic to Charlotte for interchange and thus prevent failure to make connections at Charlotte on the interchange traffic.

Four motor carriers operate over all or portions of the route between Monroe and Rutherfordton. The P. & F. Motor Express provides as many as three round trips daily between Charlotte and Monroe. Barnwell Brothers, Incorporated, serve all points between Charlotte and Lincolnton, N. C., on North Carolina Highway 27, and between Lincolnton and Shelby, N. C., on North Carolina Highway 15. This concern serves all cotton factories and mills in the general territory between Charlotte and Rutherfordton. The Horton Motor Lines provides a daily service between Charlotte, Shelby and Rutherfordton, and a daily pick-up service in the contiguous territory from its terminal at Shelby. The Atlantic States Motor Lines, Inc., provides daily service from Charlotte to Shelby and Lincolnton, on North Carolina Highways 27-A and 150, and also operates regularly between Charlotte and Monroe over U. S. Highway 74.

The joint board recommended denial of the applications covered by Sub. Nos. 2, 4, 5 and 6, except as to the service proposed between Hamlet and Sanford, N. C., on the ground that the existing motor-carrier service was adequate, except between those two points. Applicants, however, point out that the schedules of the motor carriers have not been shown of record and they contend that proper and efficient [fol. 97] coordinated service can be maintained only by truck operation which is controlled and directed by the Railway.

Between Richmond, Va., and Henderson, N. C.—In the service proposed between Richmond and Henderson, applicants' schedules contemplate departure of the truck from Richmond at 12:00 midnight and arrival at Henderson at 8:00 A. M., on the southbound trip, and departure from

Henderson at 7:00 A. M. and arrival at Richmond at 4:00 P. M. on the northbound trip. One trip in each direction would be made daily. Applicants are now operating local train service from Richmond to Henderson but no local service from Henderson to Richmond. In the southbound service two trains are operated, one between Richmond and Norlina, N. C., leaving Richmond at 6:25 A. M. and arriving at Norlina at 4:15 P. M. The other train leaves Norlina at 11:00 A. M. and arrives at Henderson at 2:00 P. M.

In the proposed operation, the southbound freight for points between Richmond and Henderson, excluding the latter point, will be loaded on the truck leaving Richmond at 12:00 midnight. The same vehicle will transport freight from Petersburg, Va., consigned to points south thereof other than Henderson. The northbound truck will handle traffic from Henderson destined to local stations south of Richmond. The schedules permit arrival of the southbound truck at Henderson and all intermediate stations in the morning. In the northbound service deliveries would be made at points between Henderson and Richmond prior to 4:00 P. M. In the present rail service, shipments delivered at the Richmond station during the day do not leave until 6:25 A. M. on the following morning, and may reach a representative point, such as McKenney, Va., as late as 11:30 A. M. Under the proposed truck schedules the shipments will arrive at McKenney in time for early morning delivery. Due to the absence of local train service from Henderson to Richmond the transportation of less than carload shipments entails an extremely circuitous movement. For example, traffic from Grayson, N. C., 4 miles north of Henderson, destined to McKenney, Va., and received prior to 1:30 P. M. for loading in a southbound car for Henderson is there transferred to a car billed to Petersburg, which leaves Henderson at 9:00 P. M., arrives at Petersburg at 4:00 A. M., departs therefrom at 8:30 A. M. and arrives at McKenney at approximately 11:30 A. M. [fol. 98] This movement involves one transfer and two back-hauls. The proposed truck service would permit loading the shipment at Grayson at 7:15 A. M. in the morning following its receipt and a direct haul to McKenney. Applicants expect to save between 24 and 36 hours' time in service to many points by the proposed truck operation.

The proposed service is supported by a merchant located at Lacrosse, Va., and by the North American Button Manufacturing Company, of McKenney, Va. Although the joint board found that the proposed service would permit a more expeditious and economical handling of traffic than the present rail service, it recommended denial of the application on the ground that the service of the existing motor carriers between the considered points was adequate.

Between Greenwood and Great Falls, S. C.—Applicants propose to operate truck service over this route, distance about 100 miles, in order to expedite the handling of less-than-carload freight at stations between Greenwood and Great Falls. The route parallels the Railway except between Chester, S. C., and Great Falls, but no stops would be made between those points. The present train service does not permit adequate service to the smaller towns on the route. A local freight train is now operated southbound between points on the proposed route daily except Sunday, which leaves Monroe, N. C., at 10:00 A. M. and arrives at Greenwood at 10:00 P. M. No local train is operated northbound over the route which loads or unloads less-than-car-load merchandise, and this necessitates handling such merchandise on through trains which set out the cars at certain points. They are then handled back for local delivery by the southbound local train, thus involving an expensive backhaul. For example, local shipments from Atlanta, Ga., destined for Cross Hill, N. C., 15 miles north of Greenwood, leave Atlanta at 10:30 P. M., on a mixed passenger train, arrive at Clinton, S. C., a set-off point, at 4:44 A. M., and are moved back to Cross Hill by a local freight which arrives at Cross Hill at 7:00 P. M.

In the proposed service the truck would leave Greenwood at 5:30 A. M., arrive at Chester, S. C., at 10:30 A. M., depart therefrom at 11:00 A. M., and arrive at Great Falls at 12:00 noon. On the return trip the truck would depart from Great Falls at 1:00 P. M., Chester 2:15 P. M., and arrive at Greenwood at 5:30 P. M. In this service shipments [fol. 99] from Atlanta to Cross Hill, arriving on the train from Atlanta at Greenwood at 3:50 A. M., would leave the latter point at 5:30 A. M. and arrive at Cross Hill at 6:00 A. M., a saving of 24 hours time. Applicants expect to save from 12 to 24 hours in the time of delivery of less-than-carload merchandise at all points and to save in oper-

ating expense through the elimination of stops at small stations for loading and unloading such merchandise.

Sub. Nos. 9 and 10

These applications, covering routes from Jacksonville to Live Oak and from Live Oak to River Junction, Fla., respectively, in reality bring in issue one operation. The proposed route parallels the Railway throughout its entire distance except between Greenville and Lloyd, Fla., and between Tallahassee and Qunicy, Fla. The total distance over the route is approximately 225 miles. In the present rail service the westbound train is scheduled to leave Jacksonville at 8:00 P. M. and arrive at River Junction at 8:00 A. M. the following morning. Another train is scheduled to leave Jacksonville at 9:10 A. M. and arrive at Tallahassee, Fla., at 4:30 P. M. At the latter point this train digresses from the line to River Junction and serves Bainbridge and Montgomery, Fla. Another train scheduled to leave Jacksonville about 8:10 P. M. performs local service between Jacksonville and Live Oak, and at the latter point makes connection with the Live Oak, Perry & Gulf Railroad. This train arrives in Live Oak at 2:00 A. M. and on the return trip leaves at 2:30 A. M. and arrives in Jacksonville about 8:00 A. M.

In the eastbound service, from Live Oak to Jacksonville, one train which makes connection with a train of the Louisville & Nashville Railway at River Junction leaves the latter point at 10:00 A. M. and is scheduled to arrive in Jacksonville at 9:30 P. M. Another train operated from Montgomery, Ala., via Bainbridge, Fla., is scheduled to leave the latter point at 6:15 P. M. and arrive in Tallahassee at 7:45 P. M. and to leave Tallahassee at 8:15 P. M. and arrive in Jacksonville at 2:30 A. M. the following morning.

The proposed truck service is to be operated daily, except Sunday, and in the westbound schedule the truck would leave Jacksonville at 7:00 P. M., arrive in Live Oak at 11:30 P. M., depart from Live Oak at 11:45 P. M., and arrive at River Junction at 6:15 A. M. The arrival at River Junction [fol. 100] is said to be sufficiently early to make connection with a train of the Appalachicola Northern Railroad which departs from River Junction for Port St. Joe, Fla., and intermediate points at 7:10 A. M. In the eastbound schedule the truck would leave River Junction at 11:00

A. M., arrive at Live Oak at 5:00 P. M., depart therefrom at 12:00 midnight, and arrive at Jacksonville at 4:00 A. M.

Applicants anticipate considerable savings in time of delivery by the proposed service and to effect operating economies through a reduction in the number of freight cars handling less-than-carload shipments. The speeding up of applicants' existing schedules is illustrated by the following example: A shipment arriving at Jacksonville from an interstate origin during the day, consigned to Monticello, Fla., is now transported on the train which is scheduled to leave Jacksonville at 8:00 P. M. The shipment is set out at Drifton, Fla., at 3:50 A. M. the following morning and remains at that point until picked up by an eastbound train at 2:45 P. M. of the same day and is delivered at Monticello about 3:30 P. M. In the proposed truck service the shipment would move out of Jacksonville at 7:00 P. M. on the evening of its arrival at that point, and would be delivered at Monticello at 3:05 A. M. the following morning, or a full day in advance of the present rail service. Applicants estimate the savings to be accomplished through decrease in the number of cars used in the local service at $3,000 to $3,500 per year.

Protestants' exceptions to the recommended orders of the joint board authorizing the service between Jacksonville and River Junction are principally to the effect that the service can be performed by the existing motor carriers. Applicants, however, contend that since their service will merely be substituted for existing rail service, the traffic is of the character which protestants would ordinarily have no opportunity to obtain, and could not, therefore, be considered as traffic diverted from the motor carriers. Applicants also point out that no one motor carrier now serves the entire route between Jacksonville and River Junction.

Sub. No. 15

The service proposed between Monroe and Waxhaw, N. C., is an extension of applicants' present service between Monroe and Hamlet, N. C., which has been in effect for a number [fol. 101] of years. The operation involves an extension of only 12.5 miles to Waxhaw. The proposed schedule contemplates departure of a truck from Monroe at 8:00 A. M., arrival at Waxhaw at 8:40 A. M., and departure from the latter point at 9:20 A. M. and arrival at Monroe at 10:00

A. M. of the same day. Operations will be conducted daily except Sunday. The intermediate stations of Houston and Mineral Springs, N. C., will be served in addition to Waxhaw.

The volume of traffic between the considered points at the present time does not justify daily train service and applicants have been maintaining a tri-weekly local train service. The southbound train leaves Monroe at 7:50 A. M. on Tuesdays, Thursdays and Saturdays, and arrives at Waxhaw about 8:40 A. M. The northbound train departs from Greenwood, 10 miles south of Waxhaw, at 8:00 A. M. Mondays, Wednesdays and Fridays, and arrives at Waxhaw about 4:00 P. M. and Monroe about 5:00 P. M. Applicants also operate through trains over the route which handle some shipments destined to these stations, although the stations are not directly served. The present service involves considerable indirect and back-haul service which will be avoided by the proposed operation. Less-than-carload merchandise consigned to the considered stations moves principally from interstate origins beyond Charlotte, N. C., Hamlet, and Atlanta, Ga., in package cars which break bulk at those points. Shipments consigned to Waxhaw arriving at Charlotte on Saturdays are not delivered until the following Tuesday in the present local service. Similar delays are encountered in connection with traffic from points on the proposed route.

As stated, applicants have been operating by motor vehicle between Hamlet and Monroe. They state that this operation has been quite economical and that for a period of 56 months the vehicle in operation totaled 148,872 miles, at a total average cost of 15.2 cents per truck-mile. Applicants feel that this figure will be a reasonably accurate estimate for the cost of operation of the proposed extension to Waxhaw.

Sub. No. 18

Since November 20, 1937, applicants have conducted a motor vehicle operation between Jacksonville and Fernandina, Fla., via Yulee, Fla., for the transportation of intrastate traffic. By this application they seek authority to [fol. 102] establish interstate service over the described route, paralleling the Railway and serving only stations on its line. Applicants' present train service to Fernandina

is operated to that point from Baldwin, Fla., and consists of one round trip daily with scheduled arrival at Fernandina at 8:15 A. M. and departure therefrom at 8:45 A. M. It is said to be necessary to handle existing traffic to Fernandina via Baldwin, rather than over the more direct route through Yulee, because of an existing labor contract which cannot be abrogated.

In applicants' present rail service a less-than-carload shipment ordinarily moving through Jacksonville to Fernandina from out-of-state points, and arriving at Jacksonville early in the day, is transferred to a Fernandina car and moves on that night, arriving at Fernandina between 9:30 A. M. and noon of the next day. Cars containing outbound interstate shipments from Fernandina are moved into Baldwin, and from that point to Jacksonville, where they lay over until the following day. In the proposed truck operations, shipments would leave Jacksonville at 6:30 A. M. and arrive at Fernandina at 8:00 A. M. In the outbound movement shipments received in Fernandina by 4:00 P. M. would arrive at Jacksonville at 5:30 P. M. or in time loading into the regular less-than-carload merchandise cars for movement from Jacksonville the same night, a saving in time of about a day over the present service.

From November 20, 1937, to June 15, 1938, applicants transported 854,194 pounds of freight by truck in intrastate commerce from Jacksonville to Yulee in 175 trips, and about 190,204 pounds of freight from Fernandina and Yulee to Jacksonville in the same number of trips, or an average of 4,864 pounds and 1,160 pounds per trip, respectively. In the same period applicants transported 2,213,485 pounds of less-than-carload interstate traffic by rail from Jacksonville to Fernandina in 293 cars, and 316,527 pounds of freight from Fernandina to Jacksonville in 72 cars, or an average of 7,761 and 4,369 pounds per car, respectively. The total of the combined intrastate and interstate movement for the considered period was 3,067,679 pounds from Jacksonville to Fernandina and Yulee, or an average of 17,529 pounds per trip per truck, and 506,731 pounds in the reverse direction, or an average of 2,895 pounds per truck per trip. The heavier movement to Fernandina than in the reverse direction is said to be accounted for by a movement of ma- [fol. 103] chinery and supplies used in construction of paper mills at that point.

The month of January, 1938, was employed as a test period for purposes of comparing the movement of less-than-carload traffic by all common carriers serving Fernandina, both directly and indirectly. Applicants transported 482,337 pounds in 43 cars to Fernandina and 40,204 pounds in 12 cars from that point in that month. In the same period, McJunkin Truck & Bus Lines, operating between Fernandina and Jacksonville, transported [illegible]211 pounds of freight. The St. John's River Line Company also delivered 5,019 pounds to the McJunkin Line, and the L. & L. Freight Lines interchanged 14,882 pounds of interstate traffic with the McJunkin Line. If the tonnage hauled by the two other carriers was not included in the report of the McJunkin Lines' tonnage, the latter carrier handled a total of 56,112 pounds of freight, as compared with 522,451 pounds by applicants in the same period. However, the data for the motor carriers was furnished subsequent to the hearing, and it is, therefore, not clear that the summary for the McJunkin Line did not include traffic received from the two other carriers.

Applicants anticipate effecting some economies through a reduction in the number of cars required for handling less-than-carload shipments between Jacksonville, Fernandina and Yulee. This saving is estimated at about $1,383 for the period of November 20, 1937, to June 14, 1938, during which period about 167 cars were handled between those points. In handling interstate shipments in the vehicle used in the existing intrastate operation there will be no substantial additional costs. The actual operating expense for the intrastate truck service during the period just referred to is given as $1,463.64, or an average of 16.82 cents per mile.

General Discussion and Findings

One of the questions raised by applicants in the considered operations, other than those between Richmond and Henderson, and between Hamlet and Columbia, puts in issue the jurisdiction of this Commission to require the filing of applications in respect to such operations. Applicants argue that under the last proviso of section 206 (a) of the act they are entitled to conduct operations between points wholly within the considered States by registering their intrastate authority with us. Some question has also been raised by protestants as to whether the certificates

[fol. 104] granted applicants in respect of their Florida intrastate operations by that State are of the character contemplated by the proviso of the act just referred to. We do not deem it necessary to consider that question. At the time of filing the application in the title proceeding and those in Sub. Nos. 1 to 7, applicants were engaged in interstate operations between Hamlet and Monroe, N. C.; between Jacksonville and Wildwood, Fla.; between Waldo and Morriston, Fla.; and between Brooksville and New Port Richey, Fla., all of which operations are covered by application No. MC-28984, filed with us on February 8, 1936. It, therefore, clearly appears that as of the date of filing all of the considered applications, applicants were not engaged in operation solely within any one State, and, therefore, the considered operations do not come within the latter proviso of section 206-(a) of the act.

The Railway's operating revenues for the fiscal year ending December 31, 1936, were $30,346,055, net railway operating income $2,920,583, and gross income, including revenue other than that derived from operation, $3,276,751. Applicants have conducted truck operations in both intrastate and interstate commerce over some 700 miles of routes, and are fit, willing, and able to conduct the operations proposed by these applications. However, before granting the authority sought we must determine whether it is required by the present or future public convenience and necessity.

The orders recommended by the joint boards in these proceedings, while ostensibly confining applicants to the type of auxiliary and supplementary service proposed, do not, generally speaking, have the effect of limiting applicants strictly to that type of service, and applicants during the hearings and upon the oral arguments indicated that they were unwilling to be so restricted, although they intimated a willingness to accept such a restriction if we deemed it necessary. Protestants have indicated that they principally fear the likelihood of applicants competing with them for traffic between many points which does not originate on, or is destined to terminate, on the line of the Railway. Protestants also have contended in these proceedings that they are willing to enter into arrangements with applicants to provide the type of coordinated service contemplated.

The joinder of the routes between Richmond and Columbia would permit applicants to furnish a through truck [fol. 105] service between those points through interchange

between their proposed routes unless we so restrict any authority granted herein so as to prevent it. Applicants indicate that the only time shipments might move over some combination of the routes involved wholly by motor vehicle would be in the event of a rail emergency, and they concede that the necessity for such movements would rarely arise. The existence of such hypothetical situation does not justify authority to applicants to engage in truck service which is strictly competitive with independent motor carriers, and our findings will prevent such a contingency.

Applicants contend that in the proposed operations they will be combining the best features of both rail and motor service and that the service will be unlike that of the independent motor carriers. They further contend that they cannot accomplish their intended purpose by entering into arrangements for interchange with existing motor carriers, for a number of reasons. They state that if they were compelled to turn over traffic originating on their lines to independent motor carriers they would, in many instances, be short-hauling themselves for the benefit of their competitors, and that, in some instances, this would involve the surrender of virtually all of their revenue from particular traffic.

Applicants also assert that interchange with independent motor carriers would entail additional accounting, involve difficulty in fixing responsibility for loss and damage claims and in making divisions of rates, which difficulties do not arise when the entire transportation is under the control of one agency. They further call attention to the problems that would arise in adjusting the schedules of independent motor carriers to the requirements of an efficient coordinated rail-truck service. Applicants argue that in the event of failure of the rail and independent motor service to make proper connections they would have to bear the onus of dissatisfaction with the service that would result. They further contend that interchange with independent motor carriers would involve additional checking of shipments and frequent additional handling which would prove to be considerably more expensive than transfers between rail cars and rail-owned trucks. In the event applicants' truck driver has a shipment consigned to a station at which the agent is absent, the driver unlocks the warehouse and places the shipment therein. Applicants are unwilling to accord

this privilege to the employes of the independent motor carriers.

[fol. 106] While the evidence indicates that in most instances there is adequate motor-carrier service over the considered routes it is also clear that applicants' proposed service will expedite deliveries of less-than-carload shipments which *now move* by rail. The proposed operations should result in improved service with respect to merchandise, as well as carload traffic, and the record indicates that applicants will be able to effect some economies through elimination of train stops and reduction of the number of cars in their trains. In *Illinois Central Railroad Company Common Carrier Application* —, M. C. C. — (decided March 27, 1939), we granted authority, similar to that sought by applicants herein, to the Illinois Central Railroad Company authorizing motor vehicle service between certain stations on the line of that carrier in Illinois. We there said:

> The inauguration of the coordinated operations here proposed will result in improved service being offered to the shipping public. * * * The plan proposed by applicant will result in a new type of service utilizing both forms of transportation to advantage, and differing from the service given by the railroad alone or by competing motor carriers alone. That Congress contemplated such coordination is shown by section 202 (a) of the act, which declares it to be, among other things, the policy of Congress to "improve the relations between, and coordinate transportation by a regulation of, motor carriers and other carriers." Further, section 213 (a) (1) permits a railroad to acquire a motor carrier operation provided we find "that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

In *Kansas City S. Transport Co., Inc., Common Carrier Application*, 10 M. C. C. 221, we also said:

> We do not believe that the development of this new form of service will seriously endanger the operations of protestants but, in any event, the public ought not

to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers. If that principle had been followed, indeed, no motor carrier service could have been developed.

There seems little question as to the proposed rail-truck coordinated service being in the public interest nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent [fol. 107] motor carriers. However, the only need shown of record is for service which is strictly supplemental of, or auxiliary to, and coordinated with applicants' rail service and the certificate granted herein will be limited accordingly. The limitations contained in the findings below are similar to those prescribed by us in the *Illinois Central* and *Kansas City Southern* cases, supra.

We find that the present and future public convenience and necessity require operation by applicants as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities between the points and over the regular routes described in the appendix hereto, serving the intermediate and off-route points referred to, and subject to the following conditions:

(1) The service by motor vehicle to be performed by applicants shall be limited to service which is auxiliary to or supplemental of the service of the Seaboard Air Line Railway;

(2) Applicants shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway;

(3) Shipments transported by applicants by motor vehicle shall be limited to those which move under a through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail.

(4) Such further specific conditions as we in the future may find it necessary to impose in order to restrict applicants' operations by motor vehicle to service which is auxiliary to or supplemental to the rail service of the Seaboard Air Line Railway.

We further find that applicants are fit, willing, and able properly to perform the service proposed by the considered applications and to conform to the provisions of the act and our rules and regulations thereunder; and that a certificate authorizing such operations should be granted.

Upon compliance by applicants with sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued.

Commissioner Rogers dissents.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

Appendix

The following describes the scope of the applications considered in the report. In addition to the termini of the [fol. 108] routes described, the applications embrace all intermediate points which are stations on the lines of the Seaboard Air Line Railway, and the off-route points named, which are stations on the Railway.

No. MC-86687

Filed February 23, 1937. Between Gaston, S. C., and Garnett, S. C., as follows: Gaston to Swansea, S. C., over South Carolina Highway 3, Swansea to Olar, S. C., over South Carolina Highway 6. Olar to Junction of South Carolina Highways 64 and 33 over said Highway 64, and thence to Garnett over South Carolina Highway 33.

No. MC-86687 (Sub. No. 1)

Filed February 23, 1937. Between McBee, S. C., and Sumter, S. C., as follows: McBee to Hartsville, S. C., over South Carolina Highway 35. Hartsville to Timmonsville, S. C., over U. S. Highway 15 and South Carolina Highway 403. Timmonsville to Sumter over U. S. Highway 76. Return route from Sumter to Bishopville, S. C., over U. S. Highway 15. Bishopville to Darlington, S. C., over U. S. Highway 15 and South Carolina Highways 34 and 35. Darlington to McBee over South Carolina Highway 35.

No. MC-86687 (Sub. No. 2)

Filed February 23, 1937. Between Henderson, N. C., and N. C., as follows: Henderson to Franklinton, N. C., over U. S. Highway 1. Louisburg, N. C., and return to Franklinton over North Carolina Highway 56. Franklinton to Raleigh over U. S. Highway 1.

No. MC-86687 (Sub. No. 3)

Filed February 23, 1937. Between Hamlet, N. C., and Columbia, S. C., as follows: From Hamlet, N. C., to North Carolina-South Carolina State line over North Carolina Highway 77. From said State line to junction of South Carolina Highways 98 and 9 over said Highway 98, and thence over South Carolina Highway 9 to junction with U. S. Highway 1, and thence over latter Highway to Cheraw, S. C. Cheraw to Pageland, S. C., over South Carolina Highway 9. Pageland to McBee over South Carolina Highway 35. McBee to Columbia over U. S. Highway 1. Return route from Columbia, as follows: U. S. Highway 1 to junction with South Carolina Highway 9; thence over latter Highway to junction with South Carolina Highway 98; thence over latter Highway to North Carolina-South Carolina State line, and thence over North Carolina Highway 77 to Hamlet.

No. MC-86687 (Sub. No. 4)

Filed February 23, 1937. Between Hamlet and Raleigh, N. C., as follows: Hamlet to Marston, N. C., over North Carolina Highway 77. Marston to Sanford, N. C., over U. S. Highway 1. Sanford to Pittsboro, N. C., over U. S. Highways 1 and 501. Pittsboro to Apex, N. C., over U. S. Highway 1.

[fol. 109] No. MC-86687 (Sub. No. 5)

Filed February 23, 1937. Between Hamlet and Wilmington, N. C., as follows: Hamlet to Lumberton, N. C., over U. S. Highway 74. Lumberton to Bolton, N. C., over North Carolina Highway 211. Bolton to Wilmington over U. S. Highway 74.

No. MC-86687 (Sub. No. 6)

Filed February 23, 1937. Between Monroe and Rutherfordton, N. C., as follows: Monroe to Lincolnton, N. C., over U. S. Highway 74 to junction with North Carolina Highway 27, thence over latter Highway. Lincolnton to Caroleen, N. C., over North Carolina Highway 150 to junction with U. S. Highway 74; thence over latter Highway to junction with North Carolina Highway 120; thence over latter Highway to junction with U. S. Highway 221 and thence over latter Highway to Caroleen. Caroleen to Ellenboro, N. C., over a county road. Ellenboro to Rutherfordton over U. S. Highway 74.

No. MC-86687 (Sub. No. 7)

Filed February 23, 1937. Between Richmond, Va., and Henderson, N. C., as follows: Richmond to South Hill, Va., over U. S. Highway 1. South Hill to Lacrosse, Va., over U. S. Highway 58. Lacrosse to Bracey, Va., over Virginia Highway 138. Bracey to Henderson over Virginia Highway 615 to junction with Virginia Highway 637; thence over latter Highway to junction with U. S. Highway 1, and thence over latter Highway. Also serving the off-route points of Chester, Warfield, Rawlings, Alberta, Cochran and Grundy, Va., over Virginia Highways 10, 643, 629, 137, 34, and 644, respectively.

No. MC-86687 (Sub. No. 8)

Filed May 26, 1937. Between Greenwood, S. C., and Great Falls, S. C., as follows: Greenwood to Chester, S. C., over South Carolina Highway 7. Chester to Great Falls, S. C., over South Carolina Highway 97. Also the off-route point of Cross Hill, S. C., over South Carolina Highway 39 and the off-route points of Renno and Leeds, S. C., over county highways.

No. MC-86687 (Sub. No. 9)

Filed August 9, 1937. Between Jacksonville and Live Oak, Fla., over U. S. Highway 90.

No. MC-86687 (Sub. No. 10)

Filed August 9, 1937. Between Live Oak and River Junction, Fla., over U. S. Highway 90, except that the application indicates a digression beginning at the junction of Florida Highway 43 and U. S. Highway 90, thence to Tallahassee over Florida Highway 43, a county highway, and Florida Highway 19, via Lloyd Capitola, and Chaires, Fla. The off-route points of Aucilla, Fla., over Florida Highway 42, and Drifton, Fla., over U. S. Highway 19 are served.

[fol. 110] No. MC-86687 (Sub. No. 15)

Between Monroe and Waxhaw, N. C., over North Carolina Highway 75, and the off-route point of Mineral Springs, N. C., over a county highway.

No. MC-86687 (Sub. No. 18)

Between Jacksonville and Fernandina, Fla., as follows: Jacksonville to Yulee, Fla., over U. S. Highway 17. Yulee to Fernandina over Florida Highway 13.

EXHIBIT M

28 M. C. C. 5

No. MC-61438[1]

Kansas City Southern Transport Company, Incorporated, Common Carrier Application

Submitted June 19, 1940. Decided January 24, 1941

1. In No. MC-89811, public convenience and necessity found to require operation, subject to certain conditions, by

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[1]This report also embraces two applications by the Kansas City Southern Transport Company, Inc., for extensions of operations, each numbered MC-61438, prior report 10 M. C. C. 221; No. MC-86687, and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18; Seaboard Air Line Railway Company (Legh R. Powell, Jr., and Henry W. Anderson,

applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, over specified routes between Elizabethtown and Madisonville, Ky., and between Nashville, Tenn., and Hopkinsville, Ky., serving certain intermediate and off-route points which are stations on its rail lines. Issuance of certificate, subject to conditions, approved on compliance by applicant with certain requirements, and application in all other respects denied.

2. Upon oral argument, conditions attached to certificates granted in prior reports, 10 M. C. C. 221, 17 M. C. C. 413, 19 M. C. C. 702, and 22 M. C. C. 213, authorizing operations in interstate or foreign commerce, by applicants as common carriers by motor vehicle of general commodities in coordinated motor-rail service between various points over various routes, modified. Issuance of certificates authorized on compliance with certain conditions, and order entered vacating and setting aside certain prior orders and denying the applications in part.

Appearances in reports other than No. MC-89811 as shown in prior reports, and, in addition, *H. Z. Maxwell, C. O. Heidley, C. F. Real, Harvey F. Krogman*, and *S. C. Lush* on oral argument.

William A. Northcutt and *W. L. Grubbs* for applicant in No. MC-89811.

J. R. Turney, G. R. Rives, James W. Wrape, B. W. LaTourette, H. W. Vincent, Charles E. Banks, R. W. Brunow, [fol. 111] *Richard Gleaves, James H. Denney, Reuben Crimm, Charles Roser, Morgan J. Parlin, Charles B. Skimerton, L. H. Miles*, and *W. S. Daugherty* for protestants in No. MC-89811.

William C. McMurry, L. A. Gossage, and *Walter C. Newkirk* for interveners in No. MC-89811.

Receivers) Motor Operation—Gaston Garnett, S. C., prior report 17 M. C. C. 413; No. MC-88370, LandA Motor Lines Contract Carrier Application, prior report 22 M. C. C. 213; No. MC-48602, subnumbers 2 to 5, inclusive, Chicago, Rock Island & Pacific Railway Company Extensions—Iowa, Missouri, Kansas, and Nebraska, prior report 19 M. C. C. 702; and No. MC-89811, Louisville & Nashville Railroad Company Common Carrier Application.

Report of the Commission on Oral Argument and Reconsideration

EASTMAN, *Chairman:*

Each of the applications herein considered, except No. MC-89811, has been the subject of a prior report by division 5, as indicated in footnote 1, and has been reopened for oral argument and reconsideration upon petitions of applicants.[2] No. MC-89811 has been the subject of a recommended report and order of a joint board to which applicant filed exceptions. Upon petition of the American Trucking Association, Inc., it too was reopened for oral argument along with the other cases herein considered. Our conclusions in this case differ from those recommended by the joint board.

Applicants in each case are railroads or companies subsidiary to or affiliated with railroads. In each application authority is sought to engage in motor-vehicle operations in the transportation of general commodities in line-haul operations between points on rail lines of applicants or of railroads associated therewith. In all of the cases, except No. MC-89811, which will be more fully discussed hereinafter, division 5 found that the proposed motor-vehicle operations were those of a common carrier by motor vehicle, and that public convenience and necessity required the proposed service to the extent it would be auxiliary to or supplemental of rail service, and authorized the issuance of certificates subject to certain conditions which were imposed for the purpose of limiting the authorized operations to those which would be in fact auxiliary to or supplemental of rail service.

Specifically the conditions imposed by division 5 in No. MC-61438 are as follows:

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental

[2] The title case, No. MC-61438, is the "grandfather" clause application of the Kansas City Southern Transport Co., Inc., which was denied in the prior report and order of November 12, 1938. Though reopened with the related extension applications of the same number, it offers no present issue and need not be further considered. The order of denial, as far as it is concerned, is still effective.

of rail service of the Kansas City Southern Railway Company or the Arkansas Western Railway, hereinafter called the railways.

[fol. 112] 2. Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railways.

3. Shipments transported by applicant shall be limited to those which it receives from or delivers to either one of the railways under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

4. All contractual arrangements between applicant and the railways shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

In prior reports in the other cases, each of the certificates granted was made subject to similar conditions. In some, involving railroad applicants, the wording of condition 3 was changed by omitting the words "it receives from or delivers to either one of the railways" and inserting in lieu thereof the word "move," and condition 4 was also omitted as not applicable. In No. MC-86687, the words "or interchange traffic at" were omitted in condition 2, apparently on the theory that motor carriers may not interchange traffic at points other than those which they are authorized to serve.

In the prior report in No. MC-61438, 10 M. C. C. 221, division 5 discussed at some length the question of what restrictions should be imposed, and stated that, if applicant should be of the opinion that the limitations imposed would prevent it and the associated rail carriers from providing an adequate coordinated rail-and-motor service or that public convenience and necessity require the institution of service wholly by motor vehicle to and from the smaller points which now are without such service, it might bring the matter to our attention by a petition that the proceeding be reopened for further hearing and consideration.

The purpose of the conditions imposed was to limit the motor-carrier service to that which is auxiliary to, or supplemental of, the rail service and to prevent applicants from engaging in motor-carrier operations unconnected with any rail service.

On oral argument applicants contend that condition 3 should be eliminated because it prevents them from providing an economical, efficient, and adequate coordinated rail-and-motor service and results in the continued use of both way-freight trains and trucks, lightly loaded, between various points, and because the performance of all-motor service between certain points is a necessary and integral part [fol. 113] of the plan of coordinated operations. Representatives of commercial organizations of St. Joseph, Mo., and Hutchinson and Topeka, Kans., support the position of applicant in No. MC-48602, subnumbers 2 to 5. The Railway Labor Executives' Association urges the retention of condition 3. The Brotherhood of Railroad Trainmen goes even further and takes the position that no authority to engage in such motor-vehicle operations should be granted railroads or their subsidiaries, because, in its opinion, the public need in the transportation of less-than-carload freight is one of service and rates which could be met by all-rail service, if the railroads would give the problem adequate attention. The representatives of independent motor carriers contend that the applications, for the most part, should be denied for lack of public need, since there is already available both rail and motor-carrier service which, if the railroads would cooperate with the existing motor carriers, could be linked together to provide an adequate and efficient coordinated service; but that, if we sustain the action of division 5 in granting the applications, the conditions imposed should all be retained.

Our action here is governed by the provisions of section 207 (a) of part II of the Interstate Commerce Act, which provides that a certificate shall be issued to any qualified applicant if it is found, among other things, that the proposed service is or will be required by the present or future public convenience and necessity. This, therefore, is the primary question to be determined.

Except for the representative of the Brotherhood of Railroad Trainmen, no one at the oral argument questioned the finding in the prior reports that public convenience and

necessity, in the circumstances disclosed of record, require a coordinated rail-motor service in the movement of less-than-carload traffic, and his expression of opinion to the contrary has no support in the evidence. We are persuaded that the finding of division 5 in this respect was justified, and also its further finding, upon the records in those cases, that the motor portion of such coordinated service could most efficiently and effectively be supplied either by the rail carriers themselves or by motor carriers under their control rather than by existing independent motor carriers. As stated, the representatives of the latter urge that, if the railroads would cooperate with them, the desired coordinated service could be adequately provided by the use of existing facilities and without the grant of any new operating authority. This contention was sufficiently discussed by division 5 in the prior reports. As pointed out [fol. 114] in the leading case, 10 M. C. C. 221, we are without jurisdiction to compel coordinated service between carriers by rail and carriers by motor vehicle; it could only be accomplished through the medium of through routes and joint rates: we have no power to require their establishment, and accordingly any such plan of coordination must depend upon voluntary cooperation; and the protesting motor carriers had not developed any such plan nor indicated what general form it might take. It was found that coordinated service through the voluntary cooperation of all or some of the existing motor carriers would not be practicable, for reasons amply stated, and that the useful public purpose which the proposed operations of applicant would serve could not be achieved effectively through the use of existing facilities. It was further found, and properly we think, that the development of the coordinated service would not seriously endanger the operations of existing motor carriers, but that, in any event, the public ought not to be deprived of the benefit of an improved service merely because it might divert some traffic from other carriers, pointing out that had the principle been followed no motor-carrier service could have been developed.

The traffic under consideration, which is chiefly so-called package or merchandise freight in less-than-carload quantities, is, of course, traffic which the railroads are and have been under an obligation to transport and which they will continue to transport whether we grant or deny the appli-

cations. So far as such traffic can be moved in well-loaded cars on through trains which serve only the larger points, it can be handled efficiently by rail, and the railroads have no need to substitute truck service for such rail service. The way-freight train service which is used in serving the smaller stations is, however, uneconomical and inefficient, and trucks can be used in substitution therefor to much advantage both to the railroads and to the public served. Division 5 found in 10 M. C. C. 221, and we agree, that reduction in the cost and increase in the efficiency of transportation service inure to the benefit of the general public and are required by public convenience and necessity. *Texas* v. *United States*, 292 U. S. 522, and *New York Central Securities Corp.* v. *United States*, 287 U. S. 12.

The division at page 238 went on to say this:

However, while it has been shown that public convenience and necessity require the establishment of a service by applicant which will be coordinated with that of the railway, the record is devoid of proof that there is any need for the institution of service by applicant which is not re-
[fol. 115] quired in such coordinated operations. In other words, there are plenty of motor carriers in this territory and it has not been shown that there is any need whatever for another motor carrier to furnish service such as the existing carriers furnish and having no close relation to rail operations. It follows that the certificate to be granted to applicant should be limited accordingly.

Following out this line of thought, it stated the underlying reason for condition 3, at page 239, as follows:

Applicant's evidence, as well as that of the shippers who appeared, as to the need for improved service between the stations on the lines of the two rail carriers, relates almost entirely to the movement of shipments partly by rail and partly by motor vehicle. With the possible exception of some small stations, it is clear that the present facilities for the movement of freight wholly by motor vehicle between stations on the two rail carriers' lines are adequate. Consequently, we are of the opinion that applicant should be limited to the transportation of shipments which it receives from or delivers to either one of the two rail carriers under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

Applicants now point out that condition 3 prevents the full accomplishment of the purpose which the substituted truck service is intended to serve, because the terms of that condition make it necessary to continue to maintain way-freight train service for the handling of traffic between various stations. Under condition 3, truck service may be used between such stations in connection with a prior or subsequent movement by rail, but not otherwise, notwithstanding that the truck service could readily accommodate all the traffic. Manifestly, this seriously limits the benefits in economy and efficiency of service which the substitution of trucks is intended to produce.

As the above quotations indicate, the thought of division 5 in regard to this matter was that public convenience and necessity required a coordinated rail-and-truck service, which, upon the records of the cases before it, could only be furnished efficiently and effectively by conducting the two forms of transportation under a single control, but that there was adequate independent motor-carrier service between all stations, generally speaking, so that public convenience and necessity did not require the institution between the stations of new motor-carrier service under railroad control which is not coordinated with prior or subsequent rail service. Hence condition 3. Upon further consideration, we are of the opinion that the division gave insufficient weight to the fact that the railroad, as well as the independent motor carriers, has been and is furnishing [fol. 116] service between the stations, but that between many of them the present means of railroad service, the way-freight train, is uneconomical and inefficient. This is the reason for coordinating truck service with the rail service, and, as we have found (and as division 5 also found), public convenience and necessity require the increased economy and efficiency which will result from such substituted use of trucks. By the same reasoning, however, public convenience and necessity require the substitution of trucks for way-freight train service regardless of whether there is a prior or subsequent movement by rail. Such substitution is a part of the plan of coordination, and unless it can be accomplished, the full benefits in increased economy and efficiency which the public interest demands cannot be secured.

It must be borne in mind, as above indicated, that in all of these cases the railroad has been and is transporting

the traffic in question between its stations and is under obligation to continue to do so. What it is seeking is not to enter a new field of service but to substitute a more efficient for a less efficient means of service. In both its direct and its indirect effect such substitution is in the public interest. An illustration which will come readily to mind is the widespread substitution in recent years of busses for rail service by local transit com anies. One competitive carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest.

It does not follow, however, that public convenience and necessity require in these cases a grant of operating authority to provide motor-carrier service between all the stations. There are certain larger points on the lines of the respective railroads here involved between which through freight trains are operated. Such trains include package or merchandise cars which are set out at the principal points, commonly referred to as key or break-bulk points. These cars contain merchandise destined, not only to the key points, but to way stations located between such points as well. The distribution of the way-station freight is effected by means of local way-freight trains. As previously stated, applicants desire, at least so far as the package or merchandise traffic is concerned, to discontinue the latter service and substitute in lieu thereof truck service.

[fol. 117] Applicants admit that rail service by through trains is economical and efficient for these longer hauls and that the operation of through package or merchandise cars transporting less-than-carload freight between key points will be maintained. In the circumstances, there is no need of substituting truck service, and public convenience and necessity do not require the establishment between such points of truck service under railroad control. An appropriate condition will therefore be imposed prohibiting the transportation of shipments by motor vehicle between key points. It is noted that in some instances through train service is maintained between key points, whereas in others such service is maintained in only one direction, or the key points served in one direction may differ from those served in the opposite direction. Our findings will take account of

such circumstances. While the restriction will prohibit applicants from transporting shipments as a common carrier by motor vehicle between key points, it will not prevent such transportation between points intermediate to the key points which does not involve movement between key points, or between a key point and an intermediate point.

Some difficulties have been encountered, however, in determining which points are actually the key points in all instances in view of the limited record with respect thereto. We recognize also that these points may change from time to time. Consequently, applicants may file appropriate petitions requesting us to amend the order herein so as to reflect any changes in the location of such points. Our attention may also be directed to any key points which may have been omitted. In the event any present modification is required in the designation of the key points, it should be brought to our attention by appropriate petitions filed within 30 days after the service of this report. We should also be advised by appropriate petitions of any changes in key points which may occur in the future. Such petitions should set forth fully the facts relative to the necessity for any such change.

No. MC-89811.—We now come to the application of the Louisville and Nashville Railroad Company. As previously stated, exceptions were filed by this applicant to the recommended order of the joint board denying the application, and upon petition of the American Trucking Associations, Inc., the matter was reopened for oral argument before us along with the other applications herein considered.

This applicant, a corporation, with headquarters at [fol. 118] Louisville, Ky., by application filed November 15, 1938, as amended, seeks a certificate of public convenience and necessity authorizing operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, between Elizabethtown and Madisonville, Ky., and between Nashville, Tenn., and Hopkinsville, Ky., over the two routes shown in appendix A hereto, serving the termini and the intermediate and off-route points therein shown, all of which are stations on its rail lines. A number of motor carriers and motor-carrier associations oppose the application. The Railway Labor Executives' Association, the Birmingham, Ala., Traffic Association, and the Louisville Board of Trade intervened.

Applicant proposes to establish truck service between the stations specified as a substitute for less-than-carload rail service. Less-than-carload shipments destined to the points involved will be consolidated at such principal shipping points as St. Louis, Mo., East St. Louis, Ill., Evansville, Ind., Cincinnati, Ohio, and Louisville, Ky., and then be moved in carload lots to convenient key points on the proposed routes, such as Elizabethtown, Bowling Green, Hopkinsville, Guthrie, and Madisonville, Ky., at which points they will be transferred to motor trucks for delivery to rail stations at destinations. Conversely, freight is to be collected at applicant's various stations and transported by truck to the key points, where it will be consolidated and forwarded by rail.

If a certificate is granted, applicant will conduct its operations with leased equipment. Under date of January 26, 1939, it entered into an agreement with the Railway Express Agency, Incorporated, whereby the latter will furnish it with all the vehicles that may be required. As compensation for use thereof applicant will pay 14.35 cents per truck-mile operated over route 1, and 12.5 cents per truck-mile operated over route 2. The plan contemplates the use initially of two trucks on route 1 able to carry from 4 to 5 tons each and of one truck on route 2 able to carry from 3 to 4 tons. Truck service will be rendered daily except Sunday, on regular schedules in both directions, over both routes. All traffic will be loaded and unloaded at applicant's depots, and drivers will be furnished with keys to the depots which may not be open at the times specified for the pick-up and delivery of the freight.

Applicant's less-than-carload traffic to and from the points involved, except Nashville, declined from 161,985,336 [fol. 119] pounds in 1928 to 42,132,716 pounds in 1938, or 74 percent. For its entire system, applicant's less-than-carload traffic declined from 1,515,105 tons in 1928 to 686,654 tons in 1937, or 54.7 percent, and the revenue therefrom declined from $13,093,441 in 1928 to $6,302,895 in 1937, or 51.9 percent. Similar figures for carload traffic show that in 1937 the carload tonnage for the system was 72.9 percent of that in 1928, and the revenues therefrom were 70.7 percent. These and other data of record show that there has been substantial decline in applicant's less-than-carload traffic, and that such decline in respect of traffic to and from

the points here involved has been materially greater than for its system as a whole.

A large number of shippers testified in support of the application. Merchandising methods have undergone changes, and merchants are now operating on a basis which requires frequent replenishment of stocks. As a result both shippers and consignees are demanding that their shipments be expedited in every way possible. Applicant believes that this demand can be best served by transporting less-than-carload shipments by rail in through cars with comparatively heavy loads to convenient distributing or key points and establishing coordinated service at the distributing points for movement to final destination by truck. Similar service would be provided in the reverse direction. It estimates that the coordinated service will result in reductions in time of delivery of less-than-carload freight to the points herein involved of from 1 to 3 days.

The trucks would be used in lieu of rail service now provided through the use of way-freight trains. The operations of these trains would continue, but they would be confined to the handling of carload freight, and applicant estimates that there would be a saving in rail operating costs of $34,372 per annum, owing to reductions chiefly in expense of switching and of loading and unloading cars, but including savings in car maintenance and depreciation. This saving, however, is somewhat speculative; and whether it would actually amount to as much as the added cost of operating the trucks is problematical. It is clear that the main advantage of the new service to applicant would be in the improvement of service and in the prospect that it would result in substantial traffic gains.

The interstate transportation service which applicant seeks authority to perform by truck relates primarily to traffic which will receive either a prior or a subsequent [fol. 120] movement by rail. However, applicant also contemplates transporting shipments from origin to destination solely by truck in both interstate and intrastate commerce. Applications for authority to engage in intrastate operations in Tennessee and Kentucky have been filed with the appropriate State authorities.

Applicant has been serving the points under consideration as a common carrier by railroad for over 50 years,

and without question is fit, willing, and able properly to perform the proposed service.

The protesting motor carriers in this case, with the aid of the American Trucking Associations, Inc., presented much more elaborate and comprehensive evidence in opposition to the application than was presented in any of the prior cases hereinbefore discussed. As has been seen, this evidence was persuasive to the joint board which conducted the hearings, for in its recommended report and order the proposal was that the application be denied, a fact which must be given the weight to which it is entitled. Protestants undertake to show that the proposed operations are not required by the present or future "public convenience and necessity," in the light of the interpretation of those words which was given by division 5 in *Pan-American Bus Lines Operation*, 1 M. C. C. 191, where it was said, at page 203:

> The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

While they admit that the proposed operations will result in service better than applicant is affording and better in some instances than is afforded by competing motor carriers, protestants introduced evidence to show, by a cost study, that the less-than-carload service rendered by applicant on its system as an entirety is carried on at a large loss. This forms the basis for a contention that the proposed operations "will prove disserviceable to the public by imposing an additional burden upon applicant's other traffic." The cost study, as revised to give effect to criticisms made by applicant, showed a loss of over $1,100,000 per year out of traffic which produced total revenues of $6,300,000, without taking into account terminal, switching, and pick-up and delivery deductions. This loss was based on the full allocated cost of handling the traffic. That there [fol. 121] is such a loss is not conceded by applicant, which makes the usual criticisms of the assumptions upon which

such estimates of cost are necessarily based but presented no study of its own. Without making a finding of the exact amount, we are of the opinion that upon the basis of full allocated cost there can be little doubt that the less-than-carload service of applicant results in considerable loss.

The record contains no proof, however, that applicant would be better off financially, if it were able to discontinue this service or, in other words, that the service does not yield a substantial excess of revenue over and above the out-of-pocket expense of producing it, which may be taken as the expense which would be saved if it could be discontinued. That it could lawfully be discontinued without public authorization or approval may be doubted. Protestants endeavored to show that the loss would be increased, if truck service were substituted for rail service to the extent proposed, but this, we think, they have failed to show. While applicant's evidence is not conclusive that the amount which will be saved in rail service is equal to the cost of the new truck operations on the basis of existing traffic, the conclusion is justified that the new method of handling the traffic will, by reason of the improved service and consequent traffic gains without proportionate increase in cost, more than pay its way.

This conclusion does not take into account evidence offered by protestants to the effect that the Railway Express Agency cannot without loss furnish the proposed truck service at the stipulated prices of 14.35 and 12.5 cents per truck mile. This evidence was supplemented by reference to the uniform express contract between the agency and the railroads, under which the latter receive what is left out of the express revenues after all expenses of the agency have been paid, an arrangement which offers little inducement to the agency to be meticulous in the ascertainment of the cost of any particular or special service for the railroads. However, the evidence in regard to this matter is conflicting and, while there is room for doubt, it is not sufficient to justify a finding that the stipulated prices of the Agency are below cost.

For the reasons given hereinbefore in the discussion of the prior cases, we find that the proposed substitution, in part, of a new means of providing applicant's less-than-carload service will, to the extent hereinafter indicated, serve a useful public purpose, responsive to a public de-

mand or need, and from that point of view is required by the public convenience and necessity.

Protestants in this case, however, did what was not done [fol. 122] by the protesting motor carriers in the prior cases: they undertook to show that the useful public purpose which the proposed operations would serve could and would be served as well by existing carriers without adding new operations to the sum total of existing facilities. Manifestly unnecessary and wasteful duplications of service should be avoided in the public interest, and for this reason the evidence of protestants in this respect merits the most careful consideration. Three alternative plans were proposed.

Under the first of these plans, the improved service would be provided by the Railway Express Agency through the use of applicant's passenger trains. It is shown that the agency is now engaged in the business of handling in passenger-train service some less-than-carload freight at regular freight rates to and from applicant's freight stations which would be served by the proposed truck operations. It is contended that this service could be expanded to include all of the less-than-carload freight which would be handled by truck under applicant's plan, and that passenger trains are available which would provide an expedited service equal to that which the trucks could give. There is no showing, however, that the Agency would be willing to furnish such service or could do so without loss, or that the existing service of this kind which it furnishes by passenger trains at freight rates is profitable either to it or to the railroads. We therefore dismiss this plan from further consideration.

The other two plans contemplate provision of the desired service by the use of existing motor carriers. The principal such carrier is the Whitney Transfer Company, which operates between Louisville and Nashville, Bowling Green and Hopkinsville, and Nashville and Evansville, serving all intermediate and many off-route points. It could supply service between practically all points on both route 1 and route 2. Meeks Motor Freight operates between Louisville and Nashville and between Bowling Green and Hopkinsville, serving all intermediate points. It could supply service between practically all points on route 1. The Bowling Green Express operates between Louisville and

Nashville, serving all intermediate points. It could supply service between practically all points on the section of route 1 between Elizabethtown and Bowling Green. The Southeastern Motor Truck Lines operates between Nashville and Evansville, with closed doors between Nashville and the Tennessee-Kentucky State line. It could supply service between practically all points on route 2, except those located between Nashville and the State line.

[fol. 123] Under one plan the desired service would be supplied by these motor carriers through the establishment of through routes and joint rates with applicant and its connections. The motor carriers have offered to join in such routes and rates, and are willing also that the Commission shall fix the divisions, if the participating carriers are unable to agree upon them. Under the other plan, which protestants preferred, the motor carriers would publish proportional rates applicable on less-than-carload freight moving on applicant's billing. These would be truckload rates between the termini of the routes subject to a maximum and a minimum weight of 10,000 pounds, but would permit split deliveries in one direction and split pick-ups in the other at the intermediate stations. Under these rates applicant would, technically, be a shipper or forwarder over motor-carrier lines. So far as the actual shippers of the freight were concerned, applicant's own less-than-carload rates would have through application to or from the destination or origin served by the motor-carrier line.

Since these proportional rates were proposed, the Supreme Court in *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, has sustained the decision of the Commission in *Chicago and Wisconsin Points Proportional Rates*, 17 M. C. C. 573, in which proportional rates which had been published by motor carriers and were closely analogous to those here proposed were found to be unlawful. This decision, in our opinion, precludes further consideration of the proportional-rate plan, leaving the through route and joint rate plan as the only one which need be discussed.

Applicant makes numerous objections to protestants' plan. It contends that if the contemplated rail-truck service is to function properly there must be unity of interest in, and common management of, the project; that applicant could not expect to obtain from competing motor carriers the attention and devotion to the service necessary to make

of that service what the public requires and should be accorded; that the shipping public desires, as the testimony taken indicates, service for which applicant will be wholly responsible; and that the plan would in effect eliminate applicant in the affected area as a competitor for the traffic in question. It seriously objects to opening its depots to joint use with those who are its intense competitors and to making available to those competitors full information in regard to the shippers which it serves in the affected area and their traffic. It alleges that the principal protestant, the Whitney Transfer Company, has made it a practice to defy the law of the State of Kentucky appli- [fol. 124] cable to the weight of trucks and their loads and as a result has incurred frequent arrests, and that other protestants have conducted unauthorized operations. It further points out that the protesting motor carriers have no authority to serve all *all* the points to be served under applicant's plan, and alleges that they have not indicated a willingness to handle all of the less-than-carload traffic which applicant is obliged to haul.

Some of these objections are of very minor importance. While it is true that there are seven points on applicant's rail lines in the affected area which none of the protesting motor carriers is authorized to serve, the record shows that two of them each have a population of about 100, and a third has a population of about 50. The other four apparently have populations of less than 50. An exhibit filed by applicant descriptive of the traffic under consideration shows no traffic moving to or from these stations for a period of 10 years. If need for their service by motor carrier were found to exist, there is no reason to believe that difficulty would be experienced in obtaining the necessary operating authority. With respect to the traffic to be handled, protestants restricted their offer to the commodities which are generally handled by common carriers of general commodities by motor vehicle. With the exception of articles of excessive value, such as bullion, and traffic which is dangerous to handle or contaminating to other lading, protestants say that they can and will handle all less-than-carload traffic which could be handled in Railway Express Agency trucks under applicant's own plan.

With respect to the alleged violations of law by the protesting motor carriers, suitable penalties are provided for the punishment of such violations. Under section 212(a),

also, willful failure to comply with any provision of part II, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of a certificate, permit, or license, if continued after an order of the Commission has been issued commanding obedience, constitutes a ground for revocation of a certificate, permit, or license. Violations of law by a motor carrier in the past may likewise be considered in determining its fitness to receive a grant of operating authority. We have no such proceedings before us here, however.

Nor are we impressed with the danger to applicant which would result if the motor carriers were given access to some of its depots or provided with more direct opportunity to become informed in regard to the shippers which [fol. 125] applicant serves and their traffic. The communities involved are none of them very large, and it may be doubted whether there is much, if any, of this information which applicant has been able to keep secret from its motor-carrier competitors.

There are objections, however, which have greater importance. Protestants realized that the through route and joint rate plan has certain disadvantages, and for that reason they preferred the proportional-rate plan. Applicant is now, and for many years has been, engaged in handling the less-than-carload traffic in question wholly with its own facilities. It seeks to continue this status, substituting the truck in part as the means of transportation but maintaining direct control and responsibility for the entire service. Under the joint-rate plan, applicant would divide control and responsibility with one or more motor carriers, and the latter would deal directly with the shippers at one end of the joint haul. Under such an arrangement applicant would, unless it continued to provide the present service by rail, retire in part from the less-than-carload service with its own facilities in which it has so long been engaged. Moreover, the motor carrier or carriers upon which it would depend in part for the performance of an efficient joint service would also be engaged, solely or jointly with motor-carrier connections, in a competitive all-motor service. Moreover, the joint service would entail additional billing, checking, and transfer expense.

The proportional-rate plan was intended to avoid these objections, at least in considerable degree. In practical

effect it would be equivalent to the employment of motor-carrier service under contract. Applicant would continue to deal directly with the shippers, for its own less-than-carload rates would continue to apply over the through movement. The motor carrier would have no dealings with the shipper, but would receive for its part of the work a payment from applicant based on a simple truckload rate. The protesting motor carriers offered to agree to furnish applicant, upon 3 hours' notice, with necessary equipment at Bowling Green, Guthrie, Hopkinsville, Nashville, Madisonville, and Elizabethtown, which are the points at which applicant proposes to transfer from rail to truck or vice versa, and also at Louisville and Evansville, if desired, at the time designated, and on the schedules fixed, by applicant. Shipments from and to agency stations would move under seals, and would be loaded and unloaded by applicant's employees; motor-carrier employees would load and unload only at nonagency stations. For reasons already [fol. 126] stated, however, the proportional-rate plan must be dismissed from consideration.

Protestants urge that even under the joint-rate plan, it would be in the self-interest of the motor carriers to make the joint service as efficient and attractive to the shippers as possible, and also that the cost to applicant would be less than under its own plan. The preponderant movement of the present traffic of the motor carriers is south-bound. They operate on the average to about 75 percent of capacity in that direction, whereas north-bound the average is only about 25 percent. Accordingly they have arranged their proposed schedules for the coordinated service with applicant so that their part of the haul would be largely north-bound. This, they say, would improve their load factor, a result greatly to be desired. However, a considerable part of the traffic would move south-bound.

Their claim that the cost would be less to applicant than under its own plan is based wholly upon calculations that they could perform the service with less truck-miles. They propose to secure for their service revenue of 20 cents per truck-mile, which is much higher than the charges of 14.35 cents over one route and 12.5 cents over the other which the Railway Express Agency proposes to make. An additional charge of 2.5 cents per 100 pounds would be made for any loading or unloading done by their employees. With equal truck-miles, therefore, the cost under protestants' plan

would be materially higher. Their claim that they could perform the service with a sufficient saving in truck-miles so that the total cost would be lower is based on assumptions, some of which were sharply challenged by applicant. Thus, it was assumed that the type of truck to be supplied by the Agency for route 1 could carry no more than 4 tons, whereas it was testified for applicant that it is capable of carrying as much as 5 tons. It was also shown by applicant that some of protestants' proposed schedules contemplate deliveries in early morning hours when no station employees of applicant would be available, thus entailing payments to the motor carriers for unloading at the rate of 2.5 cents per 100 pounds. It was further shown that the schedules would make it necessary for applicant to transfer freight at Bowling Green from one through railroad car to another at an early morning hour when applicant would have no employees available for the purpose. We are not satisfied on the evidence of record that such a saving in truck-miles as protestants estimate could actually be made. In this connection it should be borne in [fol. 127] mind that their calculations were based on traffic handled by applicant in the past. If the traffic should grow under the coordinated arrangement, as is probable, the traffic problem presented would change, and it is difficult to believe that savings in truck-miles could always be made to offset in whole or in large part the very large excess in unit price per truck-mile.

It is also to be borne in mind that protestants' proposed schedules under the proportional-rate plan were based, as we understand it, on the use of the facilities of all four of the motor carriers which operate in the affected area, under a sort of a pooling arrangement. While, as we have seen, there are no more than seven small stations which none of these carriers is authorized to serve, the Whitney Transfer Company is the only one which could serve the entire area with the exception of these stations, and the others lack authority to serve other intermediate points on their more limited routes. The problem presented by points which the motor carriers lack authority to serve, therefore, would be of increasing importance if it were necessary to utilize the services of the three other carriers as well as the Whitney Transfer Company. Under a joint-rate plan embracing all four carriers, with each of them operating independently, it would seem that much duplication

of service would result, but if to avoid such duplications applicant should confine the joint rates to the Whitney Transfer Company, it seems most unlikely that it could perform the required service with the same economy of truck-miles that was contemplated in the proposed schedules under the proportional-rate plan.

Having in mind that, for the reasons above indicated, only the joint-rate plan is available, that under that plan applicant would find it necessary to divide control over and responsibility for less-than-carload service in the affected area with motor carriers which would continue to afford a competing all-motor service, and that the unit costs of the motor service would be materially higher than under applicant's plan with no assurance of offsetting savings in truck-miles, we find that the useful public purpose which would be served by coordination of rail and truck service could not be served as well by existing motor carriers as under applicant's proposed plan.

Protestants finally showed that the four motor carriers serving the affected area suffered operating deficits prior to 1938, and in that year enjoyed a combined net income of $32,433 out of total operating revenues of $962,135. From [fol. 128] this they argue that if applicant should divert as little as 3 percent of their present traffic, it would endanger the "operations of existing carriers contrary to the public interest." The traffic which applicant proposes to transport by truck rather than by rail now amounts to about 50 tons per day, and applicant proposes to use only three trucks of small capacity to haul it. This traffic could double in size without assuming large proportions. Following the conclusions reached in the discussion of the prior reports, we shall not authorize applicant to haul by truck between its key points, which are, of course, the larger and more populous communities in the affected area. Any diversion of traffic, therefore, will be only to or from the smaller towns or hamlets which are now served by way-freight trains. Whether such diversion, if any there proves to be, will be harmful to the motor carriers may be doubted, but we are of the opinion that the public is entitled to the improvement in service which applicant proposes, regardless of the fact that it may have some slight adverse effect on competing carriers. We find, therefore, that the proposed new operation will not endanger or impair the opera-

tions of existing carriers contrary to the public interest.

As has been indicated, applicant intends to conduct the considered operations in vehicles furnished by the Railway Express Agency. If such vehicles are used, it will be necessary that they be operated under the direction and control of applicant and under its responsibility to the general public as well as shippers, and they may not be operated under the direction, control, and responsibility of the Railway Express Agency. See *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735, and *Railway Exp. Agency, Inc., Determination of Status*, 21 M. C. C. 161.

Ultimate findings.—In No. MC-89811, we find that the present and future public convenience and necessity require operation, in interstate or foreign commerce, by applicant as a common carrier by motor vehicle, of general commodities, over the regular routes described in appendix A hereto, serving the termini, all intermediate points, and the off-route points indicated in said appendix, subject to the following conditions:

1. The service by motor vehicle to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, its rail service.

2. Applicant shall not serve any point not a station on its rail line.

3. No shipments shall be transported by applicant as a [fol. 129] common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points: Elizabethtown, Bowling Green, Hopkinsville, Guthrie, and Madisonville, Ky., and Nashville, Tenn.

4. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operations by motor vehicle to service which is auxiliary to, or supplemental of, its rail service.

In the same case, we further find that applicant is fit, willing, and able properly to perform such service and to conform to the provisions of the act and our rules and regulations thereunder; and that a certificate authorizing such operations should be granted. Upon compliance by applicant with the requirements of sections 215 and 217

of the act, and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying this application, except to the extent that operations are authorized by the certificate herein granted.

In the two extension applications, each numbered MC-61438, prior report 10 M. C. C. 221; in No. MC-86687 and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18, prior report 17 M. C. C. 413; in No. MC-88370, prior report 22 M. C. C. 213; and in No. MC-48602, subnumbers 2 to 5, inclusive, prior report 19 M. C. C. 702, we affirm the findings of division 5, except we find that condition 2 (other than in the prior report 17 M. C. C. 413) and condition 3 should be modified to read as shown in appendix B hereto.

No order has heretofore been entered in No. MC-86687 and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18, denying such applications to the extent not granted. An order will be entered vacating and setting aside the order of October 28, 1939, in No. MC-48602, subnumbers 2 to 5, inclusive, the order of November 12, 1938, in the two extension applications numbered MC-61438, and the order of March 16, 1940, in No. MC-88370, and denying all of the applications herein considered except to the extent that certificates are granted in the prior reports as herein modified.

Certificates, subject to such further specific conditions as we may find it necessary to impose in order to restrict the operation therein authorized to those which are in fact auxiliary to, or supplemental of, rail service, have already been issued in the two extension applications numbered MC-61438 and in No. MC-86687, and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18. Applicants in these [fol. 130] cases will be expected, as of the effective date of the order, herein to surrender such certificates, whereupon amended certificates conforming with the conclusions herein will be issued.

MAHAFFIE, Commissioner, concurring in part:

In general I concur. I do not agree, however, that the imposition of condition 3 is warranted. Having found that the public convenience and necessity requires these truck operations, we should not impose conditions, in the nature of petty restrictions, which make them somewhat more

expensive to the carriers and somewhat less convenient to the public.

LEE, Commissioner, dissenting in part:

In the prior report in the title case, 10 M. C. C. 221, division 5 found that there are plenty of authorized motor carriers in operation throughout the territory in which the Kansas City Southern Transport Company proposes to operate; that, with the possible exception of some small stations, the present facilities for the movement of freight wholly by motor vehicle between the points which it proposes to serve are adequate; that the record fails to establish that there is any need whatever for it to provide a service such as the existing motor carriers are furnishing; and that public convenience and necessity require only the establishment by it of a motor-carrier service which will be auxiliary to, or supplemental of, rail service of its parent railroad company and which will not duplicate motor-carrier service now adequately provided by existing authorized motor carriers. Similar findings were made in the other reopened cases embraced in the instant report, and the record in No. MC-89811 will not support findings more favorable to that applicant.

The conditions imposed in the prior reports in the title case and the other reopened cases, and discussed in the instant report, were designed to restrict the authority granted to the operations which were found to be required by the present and future public convenience and necessity. For this purpose condition 3 was and is vital. On the records in these cases we could have, as urged by the existing independent motor carriers, granted less authority than this condition provides, but I insist that the evidence will not justify more.

The instant report, however, without disturbing the findings of fact in the prior reports in the reopened cases with [fol. 131] respect to the adequacy of existing motor-carrier service and without making materially different findings in No. MC-89811 with respect to such service, apparently recognizing that the records will not support any different findings, arrives at the conclusion that between all but "certain larger points," referred to as key points (and they, it is indicated, may be rather easily changed

and shifted) on the lines of the interested railroads public convenience and necessity require the "substitution" for present rail service of trucks operated by these railroads or their subsidiaries. To give effect to this conclusion, condition 3 is eliminated and a new condition is prescribed which merely prohibits the movement by motor vehicle by any of these railroads or their subsidiaries of shipments from one designated key point to another designated key point on their respective routes. The result is that they are granted authority to engage in motor-carrier operations and to furnish motor-carrier service which are not coordinated with or in any wise tied into rail operations or rail service but which, on the contrary, will duplicate the operations and the service provided by existing motor carriers and found to be adequate to fill the public need. In making this statement I have not overlooked the fact that the instant report retains condition 1 without change in text. It is clear, however, from the views expressed therein that the meaning intended to be accorded to that condition nullifies its restrictive effect to such an extent that the result stated above correctly describes the authority granted. As indicated, with this conclusion and the resulting elimination of condition 3 I cannot agree.

The act does not authorize us to grant a certificate or permit, authorizing motor-carrier operations by a railroad or its subsidiary, on any less proof of public need therefor than is required of other applicants for such operating authority. It may be, as stated in the report, that "one competitive carrier [a motor carrier] has no vested right in the continuation by another [a railroad] of an inefficient method of operation." Neither does a railroad or its subsidiary have a "vested right" to inaugurate new motor-carrier operations in competition with existing authorized motor carriers without establishing public convenience and necessity therefor. I favor issuing certificates to all of the applicants subject to the conditions prescribed in the prior report in the title case.

I am authorized to state that Commissioner Rogers concurs in this expression.

[fol. 132] Commissioner Alldredge, having been necessarily absent, did not participate in the disposition of these proceedings.

Appendix A

Routes granted

Route 1, between Elizabethtown and Madisonville, Ky.: U. S. Highway 31W between Elizabethtown and Bowling Green, Ky.; U. S. Highway 68 between Bowling Green and Hopkinsville, Ky.; and U. S. Highway 41 between Hopkinsville and Madisonville, Ky.; serving the intermediate points of Auburn, Bonnieville, Bowling Green, Cave City, Crofton, Dividing Ridge, Earlington, Elkton, Empire, Hopkinsville, Horse Cave, Kelly, Mannington, Morton, Munfordville, Nortonville, Park City, Rowletts, Russellville, and Upton, Ky., and the off-route points of Bristow, Gaithers, Glendale, Homeland, Nolin, Oakland, Rocky Hill, Smith's Grove, Sonora, Sunnyside, and Watrie, Ky.

Route 2, between Nashville, Tenn., and Hopkinsville, Ky.: U. S. Highway 41E; serving the intermediate points of Adams, Tenn., Casky, Ky., Cedar Hill, Goodlettsville, and Greenbrier, Tenn., Guthrie and Pembroke, Ky., Sadlers, Tenn., and Trenton, Ky., and the off-route points of Bakers, Kinney, Ridgetop, and Springfield, Tenn.

Appendix B

Conditions 2 and 3, as shown in the prior reports, will be modified to read as shown under the respective docket numbers below:

No. MC-61438 (two extension applications), prior report 10 M. C. C. 221:

2. Applicant shall not service any point not a station on a rail line of the railways.

3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points: Kansas City, Hume, and Joplin, Mo., Pittsburg, Kans., Shreveport and Lake Charles, La., Beaumont, Tex., Texarkana, Ark.-Tex., and Fort Smith, Ark. Nor shall they be transported from Kansas City, Mo., to Neosho, Mo.

No. MC-86687 and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18, prior report 17 M. C. C. 413:

2. [No change required.]

3. No shipments shall be transported by applicants as a common carrier by motor vehicle from Gaston, S. C., to Swansea, North, Denmark, Fairfax, and Garnett, S. C., nor from Garnett to Estill, Fairfax, Denmark, and Gaston, S. C., nor between any of the following points, or through or to or from more than one of said points: Raleigh, Henderson, Hamlet, Aberdeen, Sanford, Apex, Southern Pines, Laurinburg, Maxton, Pembroke, Lumberton, Bladenboro, Wilmington, Monroe, Charlotte, Lincolnton, Shelby, and Ellenboro, N. C., Richmond and Petersburg, Va., Columbia, Sheraw, McBee, Greenwood, and Clinton, S. C., and River Junction, Quincy, Tallahassee, and Monticello, Fla.

No. MC-88370, prior report 22 M. C. C. 213:

2. Landa shall not serve any point not a station on the rail line of the Railway.

3. No shipments shall be transported by Landa as a [fol. 133] common carrier by motor vehicle from Shreveport, La., to Pittsburg, Winnsboro, Greenville, or Dallas, Tex.

No. MC-48602 subnumbers 2 to 5, inclusive, prior report 19 M. C. C. 702:

2. Applicant shall not serve any point not a station on its rail line.

3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points: St. Joseph, Mo., and Topeka, Herington, McPherson, and Hutchinson, Kans.

EXHIBIT N

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 25th day of July, A. D. 1941.

No. MC-86687 and Subs. 1 to 10, 15, 18, 19

SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers).

Upon consideration of the records in the above-entitled matters, of applicants' petition for modification of order herein; and good cause appearing:

It is ordered, That the said matters be, and they are hereby, reopened for further hearing at a time and place to be hereafter fixed, solely to determine whether Condition 3 as set forth in the prior report, 28 MCC-5, should be modified and, if so, the extent of such modification.

By the Commission.

W. P. Bartel, Secretary. (Seal).

EXHIBIT O

Interstate Commerce Commission, Washington, D. C.

October 3, 1941.

No. MC-86687, Subs. 1 to 10, 15, 18, 19

SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers).

The above-entitled matters are hereby assigned for further hearing, solely to determine whether Condition 3 as set forth in the prior report, 28 MCC-5, should be modified and, if so, the extent of such modification, on the 12th day of November, A. D. 1941, at 9 o'clock A. M. (standard time), at the Sir Walter Hotel, Raleigh, N. C., before Examiner W. W. McCaslin.

W. P. Bartel, Secretary. (Seal.)

[fol. 134] EXHIBIT P

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket MC-86687 and Sub. Nos. 1-10, 15, 18, and 19

SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), Motor Operation and Extensions.

PETITION

Of the Antitrust Division, United States Department of Justice, to reopen the above-entitled proceeding for further hearing and to receive evidence essential to a determination of the effect upon the public interest of the granting of the application.

Comes now the Antitrust Division, United States Department of Justice, intervener in the above-entitle proceeding, and respectfully petitions the Commission to reopen said proceedings for further hearing and to receive evidence essential to a determination of the effect upon the public interest of the granting of the application in said proceeding, and in support of said petition respectfully says:

I

The original report and order of the Commission in the above-entitled proceeding was based upon separate hearings conducted by joint boards on each sub-numbered application, at which hearings all evidence was rejected except as it applied to the particular segment of route involved in each sub-numbered application and as to each sub-numbered application inadequate and inconclusive evidence was presented on the public issue of competition. The said report and order was issued July 11, 1939, 17 MCC-413, and included as a restriction upon the authority granted under each sub-numbered application, a condition which limited the railroad's motor-truck operations to those shipments where a prior or subsequent rail haul was involved. Without hearing or opportunity for any party to be heard, the Commission subsequently, in a report and order issued January 24, 1941, 28 MCC-5, substituted for said restriction requiring a prior or subsequent rail haul

a new restriction which provided for key point stations selected for each segment of route over which applicant was given authority to operate. Subsequently, and on October 3, 1941, the Commission consolidated and noticed 14 of the [fol. 135] sub-numbered applications for hearing at Raleigh, N. C., beginning November 12, 1941, for the purpose of determining the extent to which, if any, the said key point restriction should be modified.*

II

At the hearing held pursuant to said notice at Raleigh, N. C., November 12 and 13, 1941, the Examiner erroneously excluded evidence relating to competition between the railroad's motor-carrier operations and other common carriers by motor vehicle and the effect of granting the authority sought in this supplemental proceeding upon such competing motor carriers, facts essential to a determination by the Commission of the public issue of the extent, if any, to which the modification of such key point restrictions would unduly restrain competition in the motor-carrier field. Further, the Examiner erred in refusing to direct the railroad-applicant, pursuant to motion of your petitioner, to submit a statement of tonnages transported by its motor-truck facilities during the year 1940, and for those segments of route where the railroad-applicant is authorized to operate but does not operate, and to the extent applicant now seeks to remove restrictions, to give estimates of tonnages for such proposed new motor-carrier operations. Included in said motion was the request that such tonnage figures be divided to show interstate and intrastate tonnages and separated as to carload and less-than-carload freight. The Examiner further erred in refusing to require the railroad-applicant to produce for this record figures showing the extent, if any, to which the railroad company subsidizes motor-truck operations through utilization of its railroad stations for truck terminals, solicitation of freight, joint use of personnel, or otherwise. These facts are essential to a determination

* It should be noted that the report and order of January 244, 1941, does not include Sub. No. 19 of this docket though noticed as so included in this Consolidated hearing.

of the effect upon the public interest of the railroad's motor-carrier operations as they are proposed to be conducted under its application in the supplemental proceeding.

III

The denial to interested parties and to the public of an opportunity to be heard on the real issues here involved arises out of the erroneous procedure adopted and rulings made, which may be summarized as follows:

[fol. 136] 1. The splitting up of the sub-numbered applications in this proceeding for segments of routes paralleling the railroad, which are in fact physically connected, for hearing by various joint boards instead of by an examiner.

2. Limitation and restriction in the hearings before said joint boards in such manner that the admission of evidence relating to the effect of the motor-truck operations by the railroad company for each segment and in their entirety upon the competive independent motor-carrier industry, and the extent to which such railroad truck operations would restrain competition, was denied.

3. The absence of public hearings before the Commission in this proceeding upon the substitution of the key point restriction as required by its order of January 24, 1941, for the restriction requiring prior or subsequent rail haul, as provided in its order dated July 11, 1939, which materially changed railroad-applicant's motor-carrier operating rights.

4. The erroneous interpretation by the Examiner of the scope of the consolidated hearing held November 12 and 13, 1941, which again so narrowed the issues as to exclude the presentation of material evidence which interested parties had been denied the opportunity to present in the prior piecemeal hearings before the joint boards.

Clearly the hearings held before the joint boards on the individual sub-numbered applications does not afford a basis upon which the Commission can make a finding as to operations proposed to be conducted under the application noticed for hearing November 12, 1941. Having secured limited authority to operate over numerous routes, which in fact constitute connected segments of a longer route

paralleling the railroad, applicant now seeks in this consolidated proceeding to remove virtually all restrictions thereon and conduct in some instances motor-truck operations competitive with independent motor carriers. This, it is repeated, is the first time that these sub-numbered applications involving numerous segments of routes have been consolidated for the purpose of hearing and, therefore, it is the first opportunity that anyone has had to present testimony not only on the public effect of substituting the key point restriction for the prior and subsequent rail-haul restriction, and the effect of such substitution upon competition, but testimony upon the broad issue of public convenience and necessity for the operations [fol. 137] proposed to be conducted under the application in the consolidated hearing. The exclusion of such testimony leaves the record barren of facts essential to a determination of the extent to which such unrestricted railroad motor-carrier operations will restrain competition and denies to the Commission itself facts essential to the required statutory finding in this proceeding.

IV

There are pending before the Commission numerous applications by railroad companies seeking authority, directly or through subsidiary companies, to conduct common carrier motor-vehicle operations, all of which involve the public question of the extent to which such applicants shall under existing law be permitted to enter the motor-carrier field. Representations have been made to the Division that if railroads through ownership and direct operation of motor-truck lines are permitted to enter the motor-carrier field without adequate restrictions and without being required to comply with the provisions of Part II, Interstate Commerce Act, independent motor carriers will have little chance to survive because the larger resources of the railroads, including railroad station facilities, joint employes, soliciting forces, and other means of subsidy not available to independent motor carriers would soon strangle such independent motor carriers. The resultant monopoly would be achieved, it is claimed, if railroad companies are permitted to engage in over-the-road motor-carrier operations in competition with independent common carriers of property by motor vehicle. As this issue

is involved in the above proceeding, it is evident that the "public interest" therein transcends in importance this case, as important as it is. To grant the application herein without a record which contains facts essential to a determination of this important issue will prevent the Commission from making the ultimate statutory finding. Reopening this proceeding for the purpose of receiving all evidence on this important public issue will enable the Commission to arrive at a determination that will preserve the independent motor-carrier industry, thereby giving effect to the will of Congress. Further, a determination so made will then find a rational basis in the evidence upon which its order can be successfully defended in the courts.

Wherefore, the Antitrust Division of the Department of Justice prays that the Commission reopen said proceedings for the purpose of taking testimony as herein above set forth, to the end that the public and all those [fol. 138] interested therein may have an opportunity to be heard and that findings may be made on such testimony in accordance with the clear intent of Congress, and that the Commission issue further order or orders in the premises as to it may seem reasonable and just.

Respectfully submitted, Arne C. Wiprud, Frank Coleman, Special Assistants to the Attorney General. David G. Macdonald, Special Attorney.

By direction of Thurman Arnold, Assistant Attorney General.

Dated at Washington, D. C., December 5, 1941.

Certificate of Service

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 5th day of December, 1941.

A. C. Wiprud.

Exhibit Q

Before the Interstate Commerce Commission

Docket No. MC186687 and Sub. Nos. 1 to 20

Application of Seaboard Air Line Railway for Motor Carrier Certificate of Convenience and Necessity

Petition for

(1) Reopening and Rehearing
(2) Admission and Production of Evidence

Filed by The American Trucking Associations, Inc.
J. Ninian Beall, General Counsel.

December 5, 1941.

[fol. 139] Before the Interstate Commerce Commission

Docket No. MC-86687 and Sub. Nos. 1 to 20

Application of Seaboard Air Line Railway for Motor Carrier certificate of Convenience and Necessity

Petition for

(1) Reopening and Rehearing
(2) Admission and production of Evidence

Comes now the American Trucking Associations, Inc., of Washington, D. C., party of record in prior proceedings and appearing on behalf of its members who represent a class too numerous to mention and who are engaged in interstate commerce over the routes and in the territory covered by the captioned applications and who are and will be affected by said applications, and respectfully petitions and moves the Commission:

(a) To reopen, consolidate and rehear all of the captioned applications.

(b) To direct the taking of evidence for the purpose of developing and determining whether the proposed and existing operations by applicant, considered together, and in connection with its transportation policy and the transportation policy of railroads, express companies, water car-

riers, and railroad associations with which it is associated, will unduly restrain competition; impair sound economic conditions in the independent trucking industry; result in unfair and destructive competitive practices; discriminate against shippers; or otherwise be inconsistent with the provisions of, or the transportation policy declared in, the Interstate Commerce Act, and with the Antitrust Laws.

(c) To direct the taking of evidence for the purpose of developing and determining what provision, restrictions, [fol. 140] limitations or conditions or combinations thereof could, or should, be incorporated in the proposed and existing certificates for the purpose of preventing any or all of the results or effects set forth in the preceding paragraph (1).

(d) To direct the taking of evidence for the purpose of determining whether the transportation policy of applicant and of applicant in connection with other rail, express and water carriers, prevents the establishing of coordinated rail-truck, water-truck, and rail-water-truck service, joint rates, proportional rates, through routes, shipper routing of traffic, handling C. O. D. shipments, tracing and adjusting loss and damage claims, with independent motor carriers, and thereby deprives the public of the opportunity to freely employ any or all transportation agencies without discrimination or restraint.

(e) To direct the taking of evidence for the purpose of determining the ownership and operating relationships, agreements or understandings of applicant in connection with any rail, express and water lines, and to determine whether such agreements or policies create or would be likely to create a monopoly of transportation or of particular traffic, and whether such policies or practices do or are likely to deprive the public of the opportunity to freely employ any or all transportation facilities or combinations of transportation facilities without discrimination or restraint.

(f) To direct the Seaboard Air Line Railway to furnish such statistical information for the record as may be necessary to enable the Commission to determine the extent, quantity, kind and character of traffic which Seaboard Air Line Railway handles subject to restrictions against participation by independent motor carriers, and the quantity,

kind and character of traffic which Seaboard Air Line proposes to handle by truck and upon which it relies for support of its application for a certificate of convenience and necessity.

(g) To hold a pre-trial conference for the purpose of determining what data the Seaboard Air Line Railway should be required to furnish at or prior to the date set for public hearings on the reopened proceedings.

Argument in Support of Petition

Petitioner shows the Commission that the hearings heretofore held in connection with the captioned application [fol. 141] were inadequate and that essential evidence was excluded, and that it is necessary to reopen these cases for the purpose of taking additional evidence in order that the Commission may have adequate information as a factual foundation for the necessary statutory findings and for the proper determination of the issues.

Taking of Testimony and Production of Evidence

In all of the prior proceedings involving these applications, the essential evidence bearing on the issues set forth in paragraph (a) to (f) was excluded over objections of protestants by the joint boards or examiners assigned to hear the applications.

The practice and custom of the Commission in receiving certificate applications from railroads on a piece-route, particular-point or highway basis, bearing separate sub-numbers, and the assignment of such separate subs to joint boards, and the exclusion of evidence by joint boards and the failure and refusal of joint boards to investigate and consider the matters required by statute, has prevented, and will continue to prevent, the Commission from obtaining and considering an adequate record from which it can make the required statutory findings.

Regardless of the fiction or subterfuge of separate sub applications, the real operations involve regional or national issues. The Commission, by statute, is charged to consider the substance rather than the form of procedure and should direct that hearings be held and conducted in a manner conducive to the receipt of proper and necessary evidence regardless of whether the hearing be by a joint board or by the Commission.

In support of the proposition that the previous hearings have not fulfilled the statutory requirements, petitioner respectfully refers the Commission to the hearings before joint boards, and the orders of the Commission in connection with these applications.

The joint boards excluded the essential evidence and rules that they were not interested in the aggregate effect of such sub applications on the independent motor carriers (Sub. 7, R. 69-70).

The joint boards were not interested in what the railroad policy might be or how it might affect the independent motor carriers (Sub. 7, R. 101).

The Joint boards didn't know that other applications were pending (Sub. 3, R. 113).

[fol. 142] The joint boards refused to hear evidence involving the effect of the several railroad applications under either the Transportation Act or the Antitrust Laws (Sub. 3, R. 113; Sub. 7, R. 5, 71-74, 99-103, 124, 125).

The joint boards failed to consider what the effect of the use of rail rates, the lack of accounting requirements, and failure to comply with the provisions of Part II of the Interstate Commerce Act, would be on the independent motor carrier industry.

Protestants made timely exceptions to these rulings at the hearings, and, in addition, protestants filed timely motions with the Commission, praying for a procedure which would enable them to present their case and enable the Commission to secure an adequate record.

On the record as made before the joint boards with the evidence excluded, and without brief or argument on the matters covered by the exceptions and motions, the Commission, by final order, decided these cases and granted the applications.

In its original order, 17 M. C. C. 413, the Commission prescribed a "prior or subsequent movement by rail" restriction. Later the Commission, without hearing evidence, removed that restriction and substituted, without evidence, the so-called key point restrictions, 28 M. C. C. 5.

Subsequently, those applications were re-opened upon petition of the railroad in connection with modification of the key points and said matters were set for hearing on November 12, 1941, before an examiner. The examiner had before him for hearing a consolidated series of sub applica-

tions (MC-86687, Subs. 1-10, 15, 18, 19). Just why the subs were heard by separate joint boards originally and were consolidated and heard by an examiner on further hearing does not appear. This would indicate that the original hearings could have been before an examiner.

Protestants again sought to introduce evidence to show the monopolistic and competitive effect of removing the key point restrictions and consolidating the sub applications. The examiner ruled that no evidence would be heard and no cross-examination touching the subjects would be permitted, and protestants were prevented from developing an adequate record.

It would pointed out to the examiner that the evidence had not been received at the previous separate joint board hearings but the examiner ruled that the Commission had specifically restricted the further hearing and was now only [fol. 143] concerned with the railroad's petition for removal or modification of the key points and he would not hear evidence regarding the effect such removal might have on protestants (Hearing Nov. 12-13, 1941, R. 81-87).

Protestants took timely exceptions and made offers of proof.

Applicant refused to disclose the extent of its state operating rights (R. 89, 90).

Applicant failed and refused to operate the certificates granted by the Commission and to demonstrate by actual operations the effect of the key point restrictions (R. 123).

Applicant admitted that the petition for removal of key point restrictions was based on railroad convenience (R. 123).

Applicant did not and does not propose separate accounting for the truck operations (Sub. 1, R. 32, 41, 42; Sub. 3, R. 93; Sub. 7, R. 49, 50, 80, 110, 119; Hearing of Nov. 12, 1941, R. 106, 114); although applicant admitted that separate accounting could be made if required by the Commission (Sub. 7, R. 81).

At the rehearing, applicant proposed to establish both coordinated (part truck—part rail) and substituted service (all truck) as defined by applicant (Sub. 7, R. 120; Hearing of Nov. 12, 1941, R. 110, 111) and to operate trucks from 75 to 100 miles and more and to consolidate some of the sub applications, without restrictions and without complying with provisions of the law applicable to independent motor carriers (Hearing No. 12, 1941, R. 113, 114).

The examiner refused to permit cross-examination to develop whether there would be any way of testing the adequacy of charges for truck transportation by railroad at railroad rates, as compared with charges which independent motor carriers are required to make (Hearing Nov. 12, 1941, R. 114).

The examiner refused to permit cross-examination for the purpose of determining how the operating authority could be policed by the Commission without accounting requirements (Hearing Nov. 12, 1941, R. 115).

The examiner refused to permit cross-examination with reference to possible alternative conditions which might be incorporated in the certificate (Hearing Nov. 12, 1941, R-115, 116).

The examiner refused to hear testimony covering possible coordination with independent motor carriers (Hearing Nov. 12, 1941, R-116, 117).

In short, the hearings as conducted by the joint boards [fol. 144] and by the examiner have failed to meet the statutory requirements as to either transportation, monopoly or due process.

Protestants were denied proper participation in the proceedings.

The convenience of railroads appears to have been substituted for the public interest. The statutory admonition with respect to unfair competitive practices, promotion of sound economic conditions in the motor carrier industry, and restraint of competition have not been and cannot be given appropriate consideration on either the present record or under the procedure which has been followed.

Production of Statistics

It is necessary to require applicant to produce statistics with respect to the proposed operations and the traffic which may be handled in order to show the competitive and monopolistic effect of its proposals and to enable protestants to meet these issues.

At the hearing in the previously referred to Seaboard Air Line application, applicant failed and refused to furnish information with respect to tonnage or character of traffic involved and the examiner refused to require the production of any such evidence (Hearing Nov. 12, 1941, R-96-104, 112, 113, 117-119, 120, 121). Although applicant

admitted that such information could be supplied (Hearing Nov. 12, 1941, R. 119, 120, 267).

Applicant disclaimed any information or knowledge with respect to the portion of traffic which might be moved wholly by truck (Hearing Nov. 12, 1941, R. 121, 267). But the record or the prior hearing, as made by the railroad, shows that nearly all, or up to 95 per cent, of the traffic would have a prior or subsequent movement by rail (Sub. 1, R. 31, 122; Sub. 3, R. 20, 22, 53, 54). Can it be possible that the Commission isn't concerned with what the facts may be?

Applicant had no information, knowledge or views with respect to mileage, tonnage or any other basis upon which key point restrictions could be established (Hearing Nov. 12, 1941, R. 127). But in the face of this situation, the Commission did, without evidence, remove the "rail haul restrictions" and designated key points, and before it a petition for modification of key point restrictions, all on a record that has been closed by the examiner (Hearing Nov. 12, 1941, R. 299).

Applicant disclaimed any knowledge as to the operation [fol. 145] of trucks by its agent, the Railway Express Agency (Hearing Nov. 12, 1941, R. 106, 107); although applicant did know that some of its motor carrier certificates were operated for it by the Railway Express Agency (Hearing Nov. 12, 1941, R. 109).

Applicant admitted that it had an interest in boat lines which it connected with (Hearing Nov. 12, 1941, R. 109, 110), and it is a matter of common knowledge that these boat and express subsidiaries are monopolistic and "freeze out" arrangements so far as independent motor carriers are concerned.

Applicant admitted that it proposed to use railroad bills of lading and apply railroad rates to the truck operations for both coordinated and substituted service (Sub. 1, R. 30; Sub. 3, R. 6; Hearing Nov. 12, 1941, R. 114). How can the reasonableness of truck transportation under rail rates and without accounting requirements ever be tested or policed?

Applicant had no knowledge of the existing truck service by independent motor carriers and refused to consider joint arrangements with such carriers (Sub. 1, R-30, 33, 96, 97, 122; Sub. 3, R-56, 60-62, 65; Sub. 7, R-35, 58) and at the hearing Nov. 12, 1941, the examiner refused to hear testi-

mony in connection with service of independent motor carriers (R-116, 117). Since when has the existence of adequate service by public carriers ceased to be important in connection with the determination of public convenience and necessity?

Denial of Motions

The Antitrust Division of the Department of Justice moved that the applicant be required to furnish certain statistical information (Hearing Nov. 13, 1941, R-268). The examiner denied the motion (R-270). The Antitrust Division requested that its motion be submitted to the Commission and not be finally passed on by the examiner. The examiner stated, "Yes. It is on the record" (R-270).

Protestants moved that the applicant be required to show its motor truck operations in their entirety (R-270). The examiner denied the motion (R-271).

The American Trucking Associations supported the motion made by the Antitrust Division. In addition, said Association moved that the hearing be continued for 60 days in order that protestants be given time to examine applicant's evidence and prepare their case (R-271).

The American Trucking Associations made a further [fol. 146] motion that the proceedings be broadened to determine the effect which modification of condition 3 (key point) would have on condition 1 (auxiliary and supplemental service) (R-272), (R-212-215).

The American Trucking Associations moved that applicant be required to submit information showing the tonnage and revenue of l. c. l. business handled by the Railway Express Agency (R-273).

The American Trucking Associations moved the Commission not to close this record until the full Commission had passed on these motions (R. 273).

The Examiner denied the motion to continue the hearing (R. 275) and — respect to the other motions, said, "You are of course at liberty to petition the Commission for further hearing if you so desire" (R-275).

The American Trucking Associations pointed out the necessity for action on the motions before the record could be closed in order that it might avail itself of its remedies in case the motions were denied (R-276).

The Antitrust Division objected to the record being closed before action on the motions was taken (R-277).

After the examiner had consistently refused to permit cross-examination, refused to hear witnesses and had forced some of protestants to make an "offer of proof" (R. 229) and the witnesses had left the hearing and gone home, the examiner told counsel for the Antitrust Division, "I will be glad to hear any witnesses you have right now. As a matter of fact the question of holding the case open, that would be impossible" (R-278, 299).

The Antitrust Division joined in the motions made by the American Trucking Associations (R-282).

The American Trucking Associations moved that 45 days be allowed for briefs on the pending motions (R-298).

All of these motions were denied or disregarded and the record was closed and the parties ordered to file briefs by January 14, 1942 (R-299).

We respectfully submit that there is no procedure under the Commission's rules of practice or any procedure known to the law whereby an examiner may disregard motions directed to the Commission, order the record closed and fix a final date for filing briefs. These motions run to substantive questions of both fact and procedure. The motions were earnestly made and were and are now earnestly insisted upon.

[fol. 147] There is a crying need for some procedure, some principles of evidence, some basis for considering these applications. We respectfully submit that the basis must rest on something more than the "managerial discretion of the railroads." As shown by the record in the Seaboard case, "managerial discretion" knows of no test or basis whatever for determining key points or any other restrictions or any reason for complying with any provisions of the Motor Carrier Act.

Wherefore, petitioner prays that this petition be granted and that such further relief be had as may to the Commission seem appropriate.

Respectfully submitted, American Trucking Associations, Inc., by J. Ninian Beall, General Counsel.

Dated at 1424 16th Street, N. W., Washington, D. C., December 5, 1941.

Certificate of Service

Copy of this petition has been served on applicant, Seaboard Air Line Railway, and other parties of record, by depositing same in the U. S. Mail.

J. Ninian Beall.

EXHIBIT R

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 21st day of January, A. D. 1942.

No. MC-86687 and Subs. 1-20

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers)

Upon consideration of the record in the above-entitled matters, of petitions filed by the Antitrust Division, United States Department of Justice, and American Trucking Associations, for further hearing to receive additional evidence and to compel applicant to produce certain information; and good cause appearing:

It is ordered, That the said petitions be, and they are hereby denied.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 148]

EXHIBIT S

34 MCC-441

Interstate Commerce Commission

No. MC-86687*

SEABOARD AIR LINE RAILWAY COMPANY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Motor Operations—Gaston-Garnett, S. C.

Submitted January 21, 1942. Decided July 6, 1942

On further hearing, condition 3 attached to certificates granted in prior reports, 28 MCC-5 and 21 MCC-773, au-

* This report embraces also the following applications by the same applicants: No. MC-86687 Sub. Nos. 1 to 10, inclusive, and Sub. Nos. 15, 18, and 19.

thorizing operation as a common carrier by motor vehicle, in interstate or foreign commerce, in the transportation of property over regular routes in rendering a service which is auxiliary to or supplemental of applicants' rail service between points on their rail lines in Virginia, North Carolina, South Carolina, and Florida; modified. Order entered vacating and setting aside the prior orders and denying the applications except to the extent granted by the prior reports as modified herein.

Charles T. Ables and *William H. Delaney* for applicants.

J. Ninian Beall, Reuben G. Crimm, C. H. Noah, W. R. Leland, H. Y. McPherson, Clifford T. Inglis, C. Mulholland, R. C. Atwood, and *H. C. Smiley* for protestants.

Arne C. Wiprud for intervener.

Report of the Commission on Further Hearing

By the Commission:

All of these applications were filed by Legh R. Powell, Jr., and Henry W. Anderson, receivers for the Seaboard Air Line Railway Company. Certificates in these proceedings were originally granted by Division 5. With the exception of that in Sub. No. 19, they were authorized in *Seaboard A. L. Ry. Co. M. Operation—Gaston-Garnett, S. C.*, 17 MCC-413. Subsequently in *Seaboard Air Line Ry. Co. Extension —Tampa, Fla.*, 21 MCC-773, the extension between Tampa and Sebring, Fla., applied for in Sub. No. 19 was authorized. [fol. 149] Together, the prior reports of the division found public convenience and necessity to require operations by the applicants as a common carrier of property by motor vehicle in interstate or foreign commerce over regular routes in Virginia, North Carolina, South Carolina, and Florida, subject to the following conditions:

1. The service by motor vehicle to be performed by applicants shall be limited to service which is auxiliary to, or supplemental of, the service of the Seaboard Air Line Railway Company.

2. Applicants shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway Company.

3. Shipments transported by applicants by motor vehicle shall be limited to those which move under a

through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail.

4. Such further specific conditions as the Commission in the future may find it necessary to impose in order to restrict applicants' operations by motor vehicle to service which is auxiliary to or supplemental to the rail service of the Seaboard Air Line Railway Company.

Condition 3, which required a prior or subsequent movement by rail and will for convenience be referred to herein as the "rail-haul" condition, was assailed by the applicants as preventing an economical, efficient, and adequate rail-motor service. Upon their petition these proceedings, except Sub. No. 19, were reopened together with a number of others in which similar conditions had been imposed. After oral argument and reconsideration in *Kansas City S. Transport Co., Inc., Com. Car. Application,* 28 MCC-5, we substituted for the rail-haul condition a so-called "key point" condition which revised condition reads as follows:

3. No shipments shall be transported by applicants as a common carrier by motor vehicle from Gaston, S. C., to Swansea, North, Denmark, Fairfax, and Garnett, S. C., nor from Garnett to Estill, Fairfax, Denmark, and Gaston, S. C., nor between any of the following points, or through or to or from more than one of said points: Raleigh, Henderson, Hamlet, Aberdeen, Sanford, Apex, Southern Pines, Laurinburg, Maxton, Penbrook, Lumberton, Bladenboro, Wilmington, Monroe, Charlotte, Lincolnton, Shelby, and Ellenboro, N. C.; Richmond and Petersburg, Va.; Columbia, Cheraw, McBee, Greenwood, and Clinton, S. C.; and River Junction, Quincy, Tallahassee, and Monticello, Fla.

Upon petition of the applicants seeking the elimination of [fol. 150] the rail-haul condition still carried in the certificate in Sub. No. 19 and the modification of the key-point condition prescribed in our prior report, we reopened the applications for further hearing. A further hearing has been held and briefs have been filed. Certain motor carriers, The American Trucking Associations, Inc., and Rail-

way Labor Executives' Association oppose the changes requested. The Antitrust Division of the United States Department of Justice intervened.

At the hearing numerous motions were made by protestants and intervener but they need not be considered here. They were renewed by petitions, following the close of the hearing, asking for reopening and rehearing of the proceedings and admission and production of further evidence. They were denied by our order of January 21, 1942.

Applicants assert that the prescribed key-point condition would not be objectionable if modified to provide as follows:

> No shipments shall be transported by applicants as a common carrier by motor vehicle from Richmond, Va., to or through Henderson, N. C., or from or through Henderson to Richmond; from Richmond to Petersburg, Va., not including shipments moving from Richmond through Petersburg to points between Petersburg and Henderson; from or through Hamlet, N. C., to or through Raleigh, N. C., or from or through Raleigh to or through Hamlet; from Wilmington, N. C., to or through Hamlet; from Charlotte, N. C., to or through Monroe, N. C., or from Monroe to Charlotte, not including shipments originating at or destined to points between Charlotte and Rutherfordton, N. C.; from Jacksonville, Fla., to Lake City, Live Oak, Madison, Tallahassee, Quincy and River Junction, Fla., not including shipments from Jacksonville destined to any other points between Jacksonville and River Junction; from River Junction and Tallahassee to Jacksonville, not including shipments from River Junction or Tallahassee destined to any other points between River Junction and Jacksonville; from Tallahassee to Quincy and River Junction, not including shipments destined to any other point between River Junction* and Jacksonville.

They also assert that the rail-haul condition in the Sub. No. 19 certificate should be eliminated. Protestants, other than Railway Labor Executives' Association, and intervener take the view that the modifications sought by appli-

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* River Junction has since been renamed Chattahoochee which designation will be used hereinafter.

cants will adversely affect the operations of existing motor carriers and unduly restrain competition in the motor carrier field.

[fol. 151] The applicants' motor vehicle service has been and will continue to be of a different character from that performed by protestants or motor carriers generally, and this is so whether we grant or deny the requested charges, which would merely relieve applicants from what they consider burdensome limitations in performing that service, rather than change the character of service previously authorized. Applicants' motor vehicle operations have been and will continue to be limited to the handling of merchandise rail traffic to and from points on their rail line as a substitute for train service. It is but a substitution of a more efficient for a less efficient means of service. The traffic has been and will continue to be rail traffic which moves at rail rates and on rail billing and which the railway has been and will continue to be under an obligation to transport. Applicants, as a motor carrier, do not solicit traffic from the general public but merely utilize motor vehicles in fulfilling their undertaking to transport as a railway. The motor vehicle service is auxiliary to or supplemental of applicants' rail service and is so limited by condition 1. The modifications requested will in no way change the character of the service applicants are authorized to perform as a motor carrier; nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor-carrier field.

Protestant, Railway Labor Executives' Association, acknowledges that some modification of the key-point condition should be made and agrees with certain of the changes suggested by applicants. It contends, however, that in other respects the suggested changes do not meet the purpose of a key-point condition in that they would permit the applicants to handle certain shipments by motor vehicle long distances through points between which through train service is maintained, and would afford no protection against long distance motor vehicle operation should extensions to unconnected routes be authorized in the future. It also takes the view that the rail-haul condition contained in the authority granted over the Tampa-Sebring, Fla., route in Sub. No. 19 should be retained as no points on that route could properly be considered key points between which

through train service is maintained and as the applicants voice no objection to the existing condition from an operating standpoint.

The original rail-haul condition which restricted the authorized operations to coordinated movements partly by [fol. 152] railroad and partly by motor vehicle was too broad in that it permitted the applicants to handle by motor vehicle over long distances and between large and important points shipments which should properly move a greater portion of the distance, or wholly, in the superior through-train service. On the other hand, it was too restrictive, because in many instances it required applicants to continue between small points the slow and costly way-freight train service which the substituted service was intended to avoid. It was to remedy these defects that we substituted a key-point condition. We pointed out, however, that in view of the limited record difficulties had been encountered in determining the key points in all instances, and that any need for modification of the designated key points should be called to our attention by appropriate petition.

The principal objection is that the designated key points include many points which are not actually key points so that in addition to prohibiting the substitution of truck service for through-train service, it also, and to a greater extent than the former rail-haul condition, prohibits the substitution of truck service for local way-freight station to station train service. This is particularly true of the numerous small intermediate points on many of the routes which have been designated as key points but which in many instances are less than 25 miles apart. For example, on the Hamlet-Wilmington route, a distance of 110 miles, there are five named key points not including the termini, three of which are not more than approximately 10 miles apart with buf two or three intervening stations. Some of the designated key points have package car service, while others have package car service only in the sense that a package car is there set out in local service to enable distribution to nearby points by "switchers" operating over portions of that particular segment. Obviously, a condition which prohibits the handling of shipments by motor vehicle between such points or to or through or from more than one of such points prohibits the improvement in the rail service which the substitute service was intended to

accomplish. Accordingly, the applicants suggest a key-point condition which it considers not objectionable from an operating standpoint.

There is no doubt that the key-point condition should be modified if the full benefits of substituted service are to be realized, but it does not follow that applicants' suggested [fol. 153] condition should be adopted. As Railway Labor Executives' Association points out, the suggested condition is predicated upon a consideration of each of the routes separately rather than of the operations as a whole, and in many instances would permit the handling of shipments by motor vehicle over long distances through points between which through-train service is and will be maintained. As partial support for such handling applicants assert it will avoid transfer of lading, but they operate, or propose to operate, separate trucks over each of the routes except the two routes which combined extend between Jacksonville and Chattahoochee and are conducted as one operation. Accordingly transfer of lading will take place whether it be between car and truck or between trucks. Furthermore, transfer of lading is a necessary incident of substituted service. A key point condition is intended to prevent the use of trucks in lieu of economical and efficient train service. It is not merely a question of length of haul but includes a consideration of the traffic volume, its directional flow, etc. Continued use of lightly loaded freight cars should be discouraged especially at a time when they may be utilized to better advantage. A modification of the prior condition which aids in attaining the maximum in operating efficiency, economy, and use of equipment is not only desirable but is required in the public interest.

Applicants' requested modification, although directed primarily to the elimination of the numerous designated key points intermediate between the termini of each of the routes which obviously hamper accomplishment of the desired result, would as to certain of the routes require the continuance of train service in the handling of shipments from a terminal point to certain small intermediate points and from certain small intermediate points to the terminal point, but at the same time permit all-motor movements over the entire route. It may be that the traffic volume and its directional flow permit efficiency and economy of operation in this manner, but we are inclined to believe that here

the intermediate points, except those of importance which are actually key points, should generally be eliminated entirely, permitting freedom of action on the part of management to utilize either means of service in the handling of shipments whichever provides the most efficient and economical service at the time. Several of the routes join to form a continuous operation extending several hundred miles while others have no physical connection with other [fol. 154] routes. Generally speaking, the termini of each of the connecting routes are relatively large cities or important junction points and on the whole a key-point condition limited to the termini and prohibiting the handling of shipments from or to or through more than one of them will permit motor vehicle service in lieu of the slower and more costly way-freight train station to station service and prevent the handling of shipments over long distances where economy and efficiency of operation require that such shipments move either wholly or for a greater portion of the distance by rail in consolidated carloads between break-bulk or concentration points. In certain instances such a condition might not be wholly satisfactory from the standpoint of existing service, but this would be true only in minor instances. On the other hand, trucks are to be utilized for the first time over several routes previously authorized but not operated, and this will no doubt require numerous changes in the existing services, both rail and motor, to attain the maximum benefits of operating efficiency and economy. Any minor difficulties might very well be overcome in the process.

Two unconnected routes are here involved and no through-train service is maintained between any two points on them. Protestant admits that economical and efficient operations requires motor-vehicle service between all points on these routes but as a protection against long-haul motor-vehicle operations in the event of future motor vehicle extensions to these routes, urges a condition prohibiting the handling of shipments by motor vehicle to of from one terminal point through the other. This, protestant urges, will avoid difficulties inevitably encountered in attempting to impose a key-point condition with respect to individual extensions. These two routes extend between Great Falls and Greenwood, S. C., and between Gaston and Garnett, S. C. They are separated from applicants' other routes only by rela-

tively short distances and both Greenwood and Garnett have through-train service to and from the nearest key-point on applicants' routes beyond these unconnected routes. It does not appear that a key-point condition would be applicable solely to extensions over the connecting segments. Under the circumstances the object protestant has in mind may be accomplished merely by including the points having through-train service as key points in connection with applicants' operations as a whole. A similar situation arises in connection with the Tampa-[fol. 155] Sebring route where protestant urges retention of the rail-haul condition. We are of the opinion, however, that this condition should be eliminated in keeping with our prior decisions. This route, however, is connected with applicants' other Florida routes here involved by another route between Jacksonville and Tampa over which applicants conduct motor-vehicle operations under an application pending in another proceeding. Tampa is an important point having through-train service to and from Jacksonville. While all-motor service is required between all points on the Tampa-Sebring route, traffic moving between such points and Jacksonville should move between Jacksonville and Tampa by rail. Under the circumstances, Tampa will be included as a key point in connection with applicants' operations as a whole.

We find that condition 3, prior reports 21 MCC-773, and 28 MCC-5, should be modified to read as follows:

> No shipments shall be transported by applicants as a common carrier by motor vehicle from Richmond to Petersburg, Va., not including shipments moving from Richmond through Petersburg to points between Petersburg and Henderson, N. C., from Monroe to Charlotte, N. C., or from Charlotte to Monroe not including shipments moving from or to Rutherfordton, N. C., or points between Charlotte and Rutherfordton, nor between the following points, or to or through or from more than one of said points: Richmond, Va., Henderson, Raleigh, Hamlet, Monroe, and Wilmington, N. C.; Hartsville, Columbia, Garnett, and Greenwood, S. C.; and Jacksonville, Tallahassee and Tampa, Fla.

An appropriate order will be entered.

Certificates have already been issued in each of the applications and applicants will be expected, as of the

effective date of the order herein, to surrender such certificates, whereupon an amended certificate conforming with the conclusions herein will be issued.

LEE, Commissioner, dissenting:

In the report of the Commission on oral argument and reconsideration, 28 MCC-5, the majority found that the key point condition there prescribed should replace the original condition 3 prescribed by Division 5. Thereafter, upon petition of applicants, the proceedings were reopened for further hearing "solely to determine whether condition 3 as set forth in the prior report, 28 MCC-5, should be modified, and if so, the extent of such modification." In the [fol. 156] instant report a substantial modification of the key points is made upon a record, which the report itself indicates, is inadequate. For instance, the record contains no evidence of the volume of less-than-carload traffic moving between points on the lines of railroad operated by applicants. In petitions filed by the American Trucking Associations and the Antitrust Division following the close of the last hearing, the inadequacy of the record was pointed out and a further hearing was sought. These petitions were denied. In my opinion, the original condition 3 prescribed by Division 5 should be retained. However, accepting the conclusions of the majority that the original condition should be replaced by a key point condition, I cannot approve the determination of key points upon the present inadequate record. The further hearing sought by the American Trucking Associations and the Antitrust Division should be granted.

Commissioner Johnson did not participate in the disposition of this proceeding.

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of July, A. D. 1942.

No. MC-86687 and Subs. 1-10, 15, 18, 19

Seaboard Air Line Railway (Leigh R. Powell, Jr., and Henry W. Anderson, Receivers)

It appearing, That on April 8, 1941, the Commission entered its report and order in Nos. MC-86687 and Sub. Nos.

1 to 10, inclusive, and 15 and 18, and that on February 17, 1940, the Commission, Division 5, entered its report and order in No. MC-86687 (Sub. No. 19), granting applicants certificates to conduct certain motor-carrier operations in interstate or foreign commerce, and that upon applicants' petition and for good cause shown said proceedings were reopened for further hearing solely to determine whether condition 3 as set forth in the prior reports should be modified, and if so, the extent of such modification.

And it further appearing, That such further hearing has been held and that a full investigation of the matters and things involved in these proceedings, on further hearing, has been made and that the Commission, on the date hereof, has made and filed its report on further hearing herein containing its findings of fact and conclusions thereon, [fol. 157] which report and the prior reports and accompanying orders above mentioned are hereby referred to and made a part hereof.

It is ordered, That the prior orders of April 8, 1941, and February 17, 1940, be, and they are hereby, vacated and set aside.

And it is further ordered, That the said applications, except to the extent granted by the prior reports as modified by the said report on further hearing, be, and they are hereby, denied effective September 8, 1942.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT T

Certificate of Public Convenience and Necessity

No. MC-86687 *

Seaboard Air Line Railway Company (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Norfolk, Va.

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 30th day of November, A. D. 1942.

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* This certificate also embraces MC-86687 Subs. 1 to 10 inclusive, and Sub. Nos. 15, 18 and 19, Seaboard Air Line Railway Company (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), Extension of Operations.

After due investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to rec-ive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding.

It is ordered, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

It is further ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

[fol. 158] *General commodities,* over regular routes,

Between Hamlet, N. C., and Columbia, S. C., as follows:

From Hamlet over North Carolina Highway 77 to the North Carolina-South Carolina State line, thence over South Carolina Highway 77 to junction U. S. Highway 1, thence over U. S. Highway 1 to Cheraw, S. C., thence over South Carolina Highway 9 to Pageland, S. C., thence over South Carolina Highway 151 to McBee, S. C., and thence over U. S. Highway 1 to Columbia; and

Return from Columbia over U. S. Highway 1 to junction South Carolina Highway 77, thence to Hamlet as specified above.

Between Richmond, Va., and Henderson, S. C.:

From Richmond over U. S. Highway 1 to South Hill, Va., thence over Virginia Highway 138 to junction U. S. Highway 1, and thence over U. S. Highway 1 to Henderson, and return over the same route.

Between points in Virginia, as follows:

From Richmond over Virginia Highway 10, to Chester;

From Richmond over U. S. Highway 1 to junction unnumbered highway, thence over unnumbered highway to Rawlings; and

Return over these routes to Richmond.

Between points in North Carolina, as follows:

From Henderson over U. S. Highway 1 to Franklinton, thence over North Carolina Highway 56 to Louisburg, thence return over North Carolina Highway 56 to Franklinton, and thence over U. S. Highway 1 to Raleigh;

From Hamlet over North Carolina Highway 77 to Marston, thence over U. S. Highway 1 to Sanford, thence over U. S. Highway 501 to Pittsboro, thence over U. S. Highway 64 to junction North Carolina Highway 55, thence over North Carolina Highway 55 to Apex, and thence over U. S. Highway 1 to Raleigh;

From Hamlet over U. S. Highway 74 to Lumberton, thence over North Carolina Highway 211 to Bolton, and thence over U. S. Highway 74 to Wilmington;

From Monroe over U. S. Highway 74 to Charlotte, thence over North Carolina Highway 27 to Lincolnton, thence over North Carolina Highway 150 to junction U. S. Highway 74, thence over U. S. Highway 74 to junction North Carolina Highway 120, thence over North Carolina Highway 120 to Cliffside, thence over U. S. Highway 221 to Caroleen, thence over unnumbered highway to Ellenboro, and thence over U. S. Highway 74 to Rutherfordton;

From Monroe over North Carolina Highway 75 to Waxhaw; and

[fol. 159] Return over these routes to Henderson, Hamlet and Monroe. Between points in South Carolina, as follows:

From Gaston over South Carolina Highway 3 to Swansea, thence over South Carolina Highway 5 to Olar, thence over South Carolina Highway 64 to junction South Carolina Highway 33, and thence over South Carolina Highway 33 to junction South Carolina Highway 5, and thence over South Carolina Highway 5 to Garnett;

From Greenwood over South Carolina Highway 7 to Chester, thence over South Carolina Highway 97 to Great Falls;

From Greenwood over South Carolina Highway 7 to junction unnumbered highway, thence over unnumbered highway to Renno;

From Greenwood over South Carolina Highway 7 to junction unnumbered highway, thence over unnumbered highway to Leeds; and

Return over these routes to Gaston and Greenwood.

From McBee over South Carolina Highway 151 to Hartsville, thence over U. S. Highway 15 to junction South Carolina Highway 403, thence over South Carolina highway 403 to Timmonsville, and thence over U. S. Highway 76 to Sumter; and

Return from Sumter over U. S. Highway 15 to junction South Carolina Highway 34, thence over South Carolina Highway 34 to Darlington, and thence over South Carolina Highway 151 to McBee.

Between points in Florida, as follows:

From Jacksonville over U. S. Highway 90 to Live Oak;

From Live Oak over U. S. Highway 90 to junction Florida Highway 43, thence over Florida Highway 43 to Lloyd, thence over unnumbered highway to Capitola, thence over Florida Highway 107 to junction Florida Highway 500, thence over Florida Highway 500 to Tallahassee, and thence over U. S. Highway 90 to Chattahoochee;

From Live Oak over U. S. Highway 90 to Monticello, thence over U. S. Highway 19 to Drifton;

From Live Oak over U. S. Highway 90 to junction Florida Highway 42, thence over Florida Highway 42 to Aucilla;

From Jacksonville over U. S. Highway 17 to Yulee, thence over Florida Highway 13 to Fernandina; and

Return over these routes to Jacksonville and Live Oak.

Between Tampa, Fla., and Sebring, Fla., as follows:

From Tampa over Florida Highway 23 to junction U. S. Highway 41, thence over U. S. Highway 41 to junction Florida Highway 79, thence over Florida Highway 79 to Lake Wales, Fla., thence return from Lake Wales over Florida Highway 79 to junction unnumbered highway, [fol. 160] thence over unnumbered highway to junction U. S. Highway 17, thence over U. S. Highway 17 to Winter Haven, Fla., thence over unnumbered highway to Auburndale, Fla., thence return from Auburndale over unnumbered highway to Winter Haven, thence over U. S. Highway 17 to junction unnumbered highway, thence over unnumbered highway to junction Florida Highway 79, thence over Florida Highway 79 to Lake Wales, and thence over Florida Highway 8 to Sebring; and

Return from Sebring over Florida Highway 8 to Lake Wales, thence over Florida Highway 79 to junction U. S. Highway 41, thence over U. S. Highway 41 to junction

Florida Highway 23, and thence over Florida Highway 23 to Tampa.

Service is authorized to and from all intermediate points on the above-specified routes, which are stations on the rail lines of the Seaboard Air Line Railway Company.

The service authorized herein is subject to the following conditions:

The service by motor vehicle to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, the service of the Seaboard Air Line Railway Company;

Said carrier shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway Company;

No shipments shall be transported by said carrier as a common carrier by motor vehicle from Richmond to Petersburg, Va., not including shipments moving from Richmond through Petersburg to points between Petersburg and Henderson, N. C., from Monroe to Charlotte, N. C., or from Charlotte to Monroe not including shipments moving from or to Rutherfordton, N. C., or points between Charlotte and Rutherfordton, nor between the following points or to or through or from more than one of said points: Richmond, Va.; Henderson, Raleigh, Hamlet, Monroe, and Wilmington, N. C.; Hartsville, Columbia, Garnett, and Greenwood, S. C.; and Jacksonville, Tallahassee, and Tampa, Fla.

Such further specific conditions as the Commission in the future may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to, or supplemental to the rail service of the Seaboard Air Line Railway Company.

It is further ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

And it is further ordered, That this certificate shall supersede the certificate issued in this proceeding on September 30, 1939, and that issued under Docket No. MC-86687, [fol. 161] Sub. 19, on April 4, 1940, which are hereby canceled.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

Exhibit U

Summary of Exceptions, Motions and Petitions by Protestants

June 11, 1937—MC-86687, Sub. 3. Protestant's telegram *gram* to Commission requesting consolidation and hearing by examiner.

June 14, 1937—MC-86687 and Subs. 1 to 7. Petition of Southern Motor Carriers' Rate Conference to consolidate applications.

August 19, 1937—MC-86687 and Subs. 1 to 7. Railway's brief in support of applications.

August 20, 1937—MC-86687 and Subs. 1 to 7. Brief of Southern Motor Carriers' Rate Conference and exceptions to Joint Board's procedure and refusal to hear evidence.

December 3, 1937—MC-86687 and Sub. 3. Exceptions of Southern Motor Carriers' Rate Conference to recommended reports and orders of Joint Boards.

December 4, 1937—MC-86687, Sub. 1. Railway's exceptions to report and order of Joint Board.

December 4, 1937—MC-86687 and Sub. 1. Special exceptions to report and order of Joint Board.

December 14, 1937—MC-86687, Subs 2 to 7. Railway's exceptions to reports and orders of Joint Boards.

December 14, 1937—MC-86687, Sub. 4. Exceptions by Southern Motor Carriers' Rate Conference to report and order of Joint Board.

December 15, 1937—MC-86687 and Sub. 3. Railway's answer to exceptions by Southern Motor Carriers' Rate Conference to Joint Board's report and order.

December 23, 1937—MC-86687, Sub. 4. Railway's reply to protestant, Southern Motor Carriers' Rate Conference, exceptions to report and order of Joint Board.

January 26, 1938—MC-28984, MC-86687, and Subs. 8 to 17. Petition of Southern Motor Carriers' Rate Conference [fol. 162] to intervene on behalf of 450 named motor carriers.

January 27, 1938—MC-86687, Sub. 8. Exceptions of Southern Motor Carriers' Rate Conference to report and jurisdiction of Joint Board.

January 27, 1938—MC-28984, MC-86687, and Subs. 1 to 17. Motion of Southern Motor Carriers' Rate Conference to consolirate hearings.

February 1, 1938—MC-86687, Sub. 8. Railway's reply to exceptions by Southern Motor Carriers' Rate Conference.

February 16, 1938—MC-86687 and Sub. 8. Order of Commission allowing intervention of Southern Motor Carriers' Rate Conference and to be treated as a party.

February 16, 1938—MC-86687, Subs 11 to 17. Order of Commission allowing intervention of Southern Motor Carriers' Rate Conference and to be treated as a party.

February 16, 1938—MC-2894 and MC-86687, Subs 1 to 17. Motion of Southern Motor Carriers' Rate Conference to consolidate denied.

February 16, 1938—MC-86687, Subs. 9 and 10. Petition of Southern Motor Carriers' Rate Conference to intervene granted.

March 9, 1938—MC-86687, Subs. 9 and 10. Exceptions of L & L Freight Lines, Inc., to report and jurisdiction of Joint Board.

March 18, 1938—MC-86687 and Subs 1 to 8. Oral argument before Division 5.

April 16, 1938—MC-86687, Subs 9 and 10. Protestants' petition for oral argument denied by the Commission.

December 5, 1938—MC-86687 and Subs. 1, 11 to 14, 16, 17, and 19. Southern Motor Carriers' Rate Conference motion for consolidation of hearing (denied 1/27/39).

December 19, 1938—MC-86687 and Subs. 1 to 10, 15 and 18. Intervention of Railway Labor Executives Association granted.

January 27, 1939—MC-86687, Subs. 1, 11 to 14, 16, 17 and 19. Order of Commission allowing intervention of Southern Motor Carriers' Rate Conference and to be treated as a [fol. 163] party.

February 27, 1939—MC-86687, Sub. 19. Railway's brief before Joint Board.

February 27, 1939—MC-86687, Sub. 19. Brief of Southern Motor Carriers' Rate Conference including exceptions to hearings by Joint Boards.

July 11, 1939—MC-86687 and Subs. 1 to 10, 15 and 18. Report and order of Division 5 of the Commission denying protestants' exceptions and granting certificates—Reported 17 MCC-413.

January 30, 1940—MC-86687 and Subs. 1 to 10, 15 and 18. Railway's petition for rehearing and reconsideration of condition 3—prior or subsequent movement by rail.

February 5, 1940—MC-86687. Answer of Southern Motor Carriers' Rate Conference to railway's petition for rehearing and reconsideration.

February 6, 1940—MC-86687, Subs. 1 to 10, 15 and 18. Reply of Railway Labor Executives Association to petition of railway for modification of key point restrictions.

February 9, 1940—MC-86687, Subs. 1 to 10, 15 and 18. Reply of Acme Freight Lines, et al., to railway's petition for modification of key point restrictions.

April 5, 1940—MC-86687 and Subs. 1 to 10, 15 and 18. Petition for consolidation of hearings involving similar issues.

May 16, 1940—MC-86687 and Subs. 1 to 10, 15 and 18. Oral argument before Commission on conditions requiring prior or subsequent movement by rail.

April 28, 1941—MC-86687, Subs. 2 to 8, 10, 15 and 19. Railway's petition for removal of key point restrictions.

May 17, 1941—MC-86687, Subs. 2 to 8, 10, 15 and 19. Reply of Railway Labor Executives' Association to railway's petition for modification of key point restrictions and petition for the taking of further evidence.

[fol. 164] May 19, 1941—MC-86687 and Subs. 2 to 8, 10, 15 and 19. Answer of Southern Motor Carriers' Rate Conference to applicant's petition of February 20, 1941, for removal of key point restrictions and petition for rehearing on a new or consolidated application.

May 19, 1941—MC-86687 and Subs. 9, 10 a[illegible] 19. Answer of Flamingo Truck Lines, et al., to railwa[illegible]'s petition for removal of key points.

October 7, 1941—MC-86687 and Subs. Petition of the Department of Justice for intervention.

December 5, 1941—MC-86687 and Subs. 1 to 20. Petitions of American Trucking Associations and Department of Justice for reopening, rehearing, admission and production of evidence.

December 15, 1941—MC-86687 and Subs. Reply of railway to petitions for interventions.

January 12, 1942—MC-86687 and Subs. 1 to 10, 15, 18 and 19. Railway's brief upon further hearing.

January 13, 1942—MC-86687, Subs. 1 to 10, 15, 18 and 19. Brief of Railway Labor Executives Association.

January 14, 1942—MC-86687, Subs. 1 to 10, 15, 18 and 19. Brief of Protestants Campbell Sixty-six Express, Inc., et al.

Exhibit V

SUMMARY OF ADDITIONAL APPLICATIONS

Docket MC-86687, Sub. 11

Atlanta-Comer, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 12

Americus-Dawson, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

[fol. 165]

Docket MC-86687, Sub. 13

Americus-Ocilla, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 14

Vidalia-Pembroke, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 16

Cedartown-Cartersville, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 17

Columbus-Bainbridge, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 20

Hamlet-Monroe, N. C.
June 22, 1940 —Application filed.
March 31, 1941 —Heard by Joint Board No. 103.
February 10, 1942 —Joint Board Report.
July 23, 1942 —Division 5 Report.

Docket MC-86687, Sub. 21

Waldo-Morriston, Fla.
June 22, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

Docket MC-86687, Sub. 22

Brooksville-Tampa, Fla.
June 22, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

[fol. 166–169]

Docket MC-86687, Sub. 23

Tampa-Brooksville, Fla., via Clearwater, Fla.
June 22, 1940 —Application filed.
Jan. 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

Docket MC-86687, Sub. 24

Jacksonville-Wildwood, Fla.
June 22, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

Docket MC-86687, Sub. 25

Wildwood-Tampa, Fla.
September 4, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

Lyon-Rhine, Ga.
Lyon-Rhone, Ga.
September 4, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 101.
April 29, 1941 —Joint Board Report.
January 8, 1942 —Division 5 Report.
February 25, 1942 —Certificate issued.

Docket MC-86687, Sub. 27

Lloyd-Tallahassee, Fla.
October 21, 1940 —Application filed.
May 26, 1941 —Heard by Joint Board No. 205.
July 29, 1941 —Joint Board Report.
August 18, 1941 —Division 5 Report.
October 14, 1941 —Certificate issued.

Docket MC-86687, Sub. 28

Hamlet-Monroe, N. C.
February 21, 1941 —Application filed.
March 31, 1941 —Heard by Joint Board No. 103.
February 10, 1942 —Joint Board Report.
July 23, 1942 —Division 5 Report.
September 26, 1942—Certificate issued.

[fol. 170] In the District Court of the United States for the Eastern District of Virginia

[Title omitted]

Order Permitting Amendment to Bill of Complaint—Filed November 26, 1943

Upon motion by plaintiffs and presentation of an amendment to the bill of complaint in this cause, which amendment has for its sole purpose and effect the elimination of the Southern Motor Carriers' Rate Conference as a party plaintiff, and for good cause shown, it is hereby ordered that said amendment be allowed and the bill of complaint heretofore filed shall stand amended by the elimination of the Southern Motor Carriers' Rate Conference, as a party plaintiff, and said bill of complaint is not otherwise amended.

Robt. W. Pollard, United States District Judge.

November 26, 1943.

[File endorsement omitted.]

[fol. 171] [File endorsement omitted]

In United States District Court

[Title omitted]

Amendment to Bill of Complaint to Set Aside Orders of the Interstate Commerce Commission—Filed November 26, 1943.

[fol. 172] To the Honorable Justices of the District Court of the United States for the District of Virginia:

The complaint in Civil Action 285, filed on October 21, 1943 is hereby amended by eliminating Southern Motor

Carriers' Rate Conference, 873 Spring Street, N. W., Atlanta, Georgia, as a party plaintiff.

American Trucking Associations, Inc., Flamingo Truck Lines, Inc., Hunt Truck Lines, Great Southern Trucking Co., Central Truck Lines, Inc., K & L Transportation Company, Inc., St. Johns River Line Company, by S. W. Shelton, Attorney for Plaintiffs, Insurance Building, Richmond, Virginia.

November 24, 1943.

J. Ninian Beall, Investment Building, Washington, D. C.; Roland Rice, 1424 16th Street, N. W., Washington, D. C.; Edgar Watkins, Jr., 873 Spring Street, Atlanta, Georgia, Of Counsel.

I hereby certify that I have this 24th day of November, 1943, served copies of the foregoing amendment to bill of complaint on the defendants by mailing same by registered mail to the Secretary of the Interstate Commerce Commission, and to Arne C. Wiprud, Esquire, Special Assistant to the Attorney General, Washington, D. C.

S. W. Shelton, Attorney for Plaintiffs.

[fol. 173] In United States District Court

[Title omitted]

Answer of the United States—Filed November 29, 1943

The United States of America, one of the defendants in the above-styled action, for answer to the Bill of Complaint herein, as amended, admits all the allegations contained in the said Complaint, as amended, and that the relief prayed for should be granted by this Court.

Wherefore, this defendant prays that the relief prayed for by plaintiffs be granted by this Court, and that the several orders of the Interstate Commerce Commission, to set aside which the present action is brought, be set aside for mistake of law and failure to afford a full and fair hearing with respect to the matters under consideration in

the proceedings before the Commission in connection with which the said orders were made.

Edward Dumbauld, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Wendell Berge, Assistant Attorney General; Sterling Hutcheson, United States Attorney.

[File endorsement omitted.]

[fol. 174] I hereby certify that copies of the foregoing answer were this day mailed to the following:

Samuel W. Shelton, Esquire, Insurance Building, Richmond, Virginia; J. Ninian Beall, Esquire, Investment Building, Washington, D. C.; Daniel W. Knowlton, Esquire, Chief Counsel, Interstate Commerce Commission, Washington, D. C.

Edward Dumbauld, Special Assistant to the Attorney General.

Dated this 27 day of November, 1943.

[fol. 175] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—Filed Dec. 18, 1943

Now come the Interstate Commerce Commission, one of the defendants above named, and in answer to the complaint as amended respectfully represents:

1. The averment of subdivision I of the complaint, entitled "Jurisdiction", is admitted.

2. The averments of subdivision II of the complaint, entitled "Plaintiffs", are admitted.

3. Answering so far as is necessary the averments of subdivision III of the complaint, entitled "Preliminary Statement", the Commission denies that the separate applica-

tions of the Seaboard Air Line Railway for certificates of convenience and necessity, namely, MC-86687 (Sub-Nos. 1 to 10, inclusive, and 15, 18 and 19), constitute in fact and substance one application for integrated operating rights: The Commission denies the conclusion that said separate applications had the effect of concealing the true nature of the application and of evading the statutory require-[fol. 176] ments for hearing by the Commission: The Commission denies that it arbitrarily and capriciously made findings without evidence and that it failed or refused to perform its statutory duties or exceeded its jurisdiction in any wise whatsoever: The Commission denies that in making and entering the orders complained of it failed to conduct a proper hearing or failed or refused to hold hearings as required by law, or improperly or unlawfully delegated the hearings of said applications to several joint boards: The Commission denies that the plaintiffs were denied a fair and proper hearing.

4. Answering the averments of subdivision IV of the complaint, entitled "Orders Complained Of", insofar as they are deemed material to the issues herein, the Commission admits that such averments, recite the nature and character of the several applications of applicant railroad and the procedural steps in the disposition by it of said applications except that the certificate authorizing operations was originally issued on September 30, 1939, and not on July 6, 1942; and the Commission further admits the truth of the chronological summary of the proceedings involving said applications as set out in Exhibits "A-2" and "U", respectively, to the complaint. The Commission denies each and every other averment of said subdivision IV.

5. Answering the averments of subdivision V of the complaint, the Commission denies the legal conclusions set forth therein and denies that it acted capriciously, arbitrarily or unlawfully in referring the several applications to the respective joint boards as shown in Exhibit "A-2" to the complaint: The Commission denies that it failed to hear and receive material and pertinent evidence or that it failed to make necessary findings or that any of its findings were made without evidence: The Commission denies that it acted improperly or unlawfully or arbitrarily or capri-

[fol. 177] ciously in any respect to any and all matters alleged in said subdivision V, or that it failed to accord plaintiffs fair and reasonable hearing.

6. The Commission denies the allegations of subdivision VI of the complaint.

7. The Commission admits the factual matters alleged in subdivision VII of the complaint, but denies that it acted arbitrarily or capriciously therein in any respect.

8. The Commission denies the allegations of subdivision VIII of the complaint.

9. The Commission admits the factual matters alleged in subdivision IX of the complaint but denies that it acted arbitrarily, capriciously or unlawfully in any respect whatsoever and for more complete answer to the averments of said subdivision IX refers to its report of July 11, 1939, attached to said complaint and marked Exhibit "L".

10. The Commission admits the factual matters alleged in subdivision X of the complaint, except that the Commission's order of January 24, 1941, did not reverse its order of July 11, 1939, but merely modified certain of its conditions; the Commission denies that it acted arbitrarily, capriciously or unlawfully in any respect whatsoever.

11. The Commission admits the factual matters alleged in subdivision XI of the complaint, but denies that it acted arbitrarily, capriciously or unlawfully in any respect whatsoever and for more complete answer to said allegations refers to its report of July 6, 1942, attached to said complaint and marked Exhibit "S".

12. The Commission admits the factual matters alleged in subdivision XII of the complaint but denies that it acted arbitrarily, capriciously or unlawfully in any respect whatsoever, and further denies the jurisdiction of the court to take cognizance of the complaint in this respect.

13. The Commission admits the factual matters alleged in subdivision XIII of the complaint, but denies that it acted arbitrarily, capriciously, or unlawfully in any respect [fol. 178] whatsoever and further denies the jurisdiction of the Court to take cognizance of the complaint in this respect.

14. The Commission denies the averments of subdivision XIV of the complaint.

15. And in further answer to the averments of the complaint the Commission avers that the findings and conclusions contained in said reports and orders of July 11, 1939 (Exhibit L), January 24, 1941 (Exhibit M), July 6, 1942 (Exhibit S), respectively, and said order of November 30, 1942 (Exhibit T), were and are and each of them was and is fully supported and justified by the evidence submitted in the proceedings before the Commission, and that in making said reports and orders it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings, including the plaintiffs herein; that said reports and orders were not made or entered either arbitrarily or unjustly or without proof or contrary to the relevant evidence, or without evidence to support them; that in making and entering said reports and orders the Commission did not exceed the authority conferred upon it by law, and the Commission denies each of and all the averments to the contrary contained in the complaint.

Except as herein expressly admitted the Commission denies the truth of each and all the averments contained in the complaint insofar as they conflict either with the averments herein or with the findings and conclusions contained in said reports and orders.

All of which matters and things the Commission is ready to aver, maintain and prove.

Wherefore, the Commission prays that the complaint be dismissed.

Interstate Commerce Commission, By: Daniel H. Kunkel, Attorney, Washington, D. C. Daniel W. Knowlton, Chief Counsel, Of Counsel, Washington, D. C.

[fol. 179] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AND NOTICE OF MOTION—Filed Jan. 6, 1944

Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company,

appear herein as parties to the above entitled cause and move for leave to intervene as defendants in this action, in order to assert the defenses set forth in their proposed answer, of which a copy is hereto attached, on the ground that said action involves the validity of orders of the Interstate Commerce Commission in proceedings before said Commission to which they were parties, and they are interested therein, and that they are entitled to intervene and [fols. 180-182] become parties as a matter of right pursuant to the provisions of Sections 212 and 213 of the Judicial Code, U. S. C. A., Title 28, Section 45a.

W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, Seaboard Air Line Railway Building, Norfolk 10, Virginia.

To: The Attorney General of the United States, Washington, D. C.; Daniel H. Kunkel, Esq., Attorney, Interstate Commerce Commission, Washington, D. C.; Samuel W. Shelton, Esq., Attorney At Law, Insurance Building, Richmond, Va.; J. Ninian Beall, Esq., Attorney At Law, Investment Building, Washington, D. C.; Roland Rice, Esq., Attorney At Law, 1424-16th Street, N. W., Washington, D. C.

Please take notice that the undersigned will bring the above motion on for hearing before this Court at the United States Court Room, United States Postoffice and Courthouse Building, Richmond, Virginia, on the sixth day of January, 1944, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, Seaboard Air Line Railway Building, Norfolk 10, Virginia.

[fol. 183] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—Filed January 6, 1944

This cause coming on to be heard on the motion of Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, for leave to appear as parties to and to intervene as defendants in this action, and the Court having considered said motion and the answer tendered therewith, and it appearing to the Court that notice of said motion has been duly served on all parties to this cause and that the said Receivers are entitled to become parties and should be permitted to intervene as prayed, and the Court being fully advised in the premises, it is

[fol. 184] Ordered, Adjudged and Decreed that Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, have leave to intervene in this cause and are hereby made parties thereto, and to that end may file their said answer within ten days from the date of this order in the same manner and with like effect as if named original parties to this cause.

Robt. W. Pollard, United States District Judge.

Jany. 6, 1944.

Entered and filed Richmond, Virginia.

C. K. Moran, Deputy Clerk.

I hereby certify that I have this 8th day of January, 1944, mailed a copy of the foregoing order to each of the plaintiffs and defendants as shown therein.

C. K. Moran, Deputy Clerk.

[fol. 185] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF LEGH R. POWELL, JR., AND HENRY W. ANDERSON, AS RECEIVERS OF THE PROPERTIES OF SEABOARD AIR LINE RAILWAY COMPANY—Filed Jan. 6, 1944

Come now Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, intervening defendants, and, with leave of court first obtained, file this their answer to the complaint herein.

[fol. 186]

I

Interveners admit the jurisdiction of this Court to review and set aside orders of the Interstate Commerce Commission as averred in paragraph I of the complaint, but deny that this Court has jurisdiction to remand the matter complained of to said Commission for further proceedings in accordance with paragraph 3 of the prayer of the complaint herein.

II

Interveners admit that plaintiffs American Trucking Associations, Inc., participated in some proceedings before the Interstate Commerce Commission involving the matters complained of herein, but deny that American Trucking Associations, Inc., appeared and participated in all such proceedings. Interveners are without knowledge or information as to the other averments of said paragraph II and neither admit nor deny the same, but call for strict proof thereof.

III

Interveners deny all and singular the averments of paragraph III of the complaint. With respect to the averment that the separate applications had the effect of concealing the true nature of the applications and of evading the statutory requirements reference is made to paragraph XV of this answer.

IV

(a) Interveners admit that, except as hereinafter stated, the proceedings before the Commission, the orders com-

plained of and the highway routes covered by the applications involved in this cause are as set forth in paragraph [fol. 187] IV(a) of the complaint. They deny that the certificate (Exhibit "T" to the complaint) and the Commission's order of July 6, 1942 (Exhibit "S" to the complaint) were the order and certificate originally authorizing the Interveners' operations here involved, and allege that, as shown by said Exhibit "T," said operations were first authorized, in part, by certificates issued September 30, 1939, and in part by an additional certificate issued April 4, 1940. Except as herein admitted the averments of said paragraph IV(a) are denied.

(b) Interveners admit that Exhibits "G," "H," "I," and "J" to the complaint correctly set forth petitions for, and orders of the Commission permitting, intervention. Interveners admit that all plaintiffs participated in certain of the said proceedings, but deny that each of them participated in or were parties to all such proceedings.

Interveners further admit that Exhibit "U" to the complaint summarizes chronologically certain of the various proceedings before the Commission, but allege that said Exhibit is incomplete in that it omits reference to the certificates issued by the Commission September 30, 1939, and April 4, 1940, hereinbefore in paragraph IV(a) of this answer referred to, and to the Commission's report of February 7, 1940 and the Commission's order of July 6, 1942.

Interveners further admit that Exhibit "A-3" to the complaint correctly shows the highway segments covered by the various applications involved in this suit, together with the highway segments covered by other applications which have been made by Interveners, but aver that such other applications and the highway segments covered [fol. 188] thereby are wholly irrelevant and immaterial to any issue here involved.

Interveners further admit that Exhibit "V" to the complaint correctly lists certain proceedings before the Interstate Commerce Commission, but aver that such proceedings are wholly irrelevant and immaterial to any issue here involved.

V

(a). Interveners admit that paragraph V(a) of the complaint correctly sets forth in part the provisions of Section

205(a) of the Interstate Commerce Act. Except as herein admitted the averments of said paragraph are denied.

(b) Interveners admit that paragraph V(b) of the complaint correctly sets forth Section 213(a)(1) of the Interstate Commerce Act, now repealed, and a part of Section 5(b) of said Act. Except as herein admitted the averments of said paragraph are denied.

(c) Interveners deny all and singular the averments of paragraph V(c) of the complaint.

(d) Interveners admit that paragraph V(d) of the complaint correctly quotes the National Transportation Policy set forth in the Interstate Commerce Act. Except as herein admitted the averments of said paragraph are denied.

VI

Interveners admit, as alleged in paragraph VI of the complaint, that certain of the plaintiffs, as protestants at the hearings before the Joint Boards in the proceedings here involved, challenged the jurisdiction of said Boards and the exclusion of evidence relating to services rendered [fol. 189] by said protestants in territories not involved in the proceedings before said Boards. Except as herein admitted the averments of said paragraph are denied.

VII

Interveners admit that certain of the plaintiffs, as protestants at the hearings before the Joint Boards in the proceedings here involved, filed motions with the Commission requesting consolidation of said hearings, as alleged in paragraph VII of the complaint. Except as herein admitted the averments of said paragraph are denied.

VIII

Interveners admit, as alleged in paragraph VIII of the complaint, that the Joint Boards excluded certain of the evidence set forth in said paragraph, and aver that all evidence so excluded was immaterial and irrelevant to any issue before said Boards. Except as herein admitted the averments of said paragraph are denied.

IX

Interveners admit, as alleged in paragraph IX of the complaint, that after hearing the several applications the Joint Boards in some instances recommended that the authority sought by Interveners be granted in whole or in part, and in other instances that such authority be denied. Interveners further admit that in a consolidated report and order covering all of the proceedings here involved, with the exception of one application later granted, Division 5 of the Commission granted all applications subject to the conditions set forth in said paragraph IX. Inter- [fol. 190] veners further admit that said report and order were issued without further hearing but deny that further hearing was required by law and allege that such further hearing was unnecessary and would have been improper for the reason that all evidence material to the issues in all proceedings here involved had been submitted in the hearings before the Joint Boards. Interveners further deny that the findings set forth in said paragraph IX are the only findings contained in the Commission's report. They allege that the essential effect of the Commission's findings was that the proposed operations would not be injurious to plaintiffs, but in any event Interveners deny that any such finding is required by law as a prerequisite to the granting of Interveners' applications.

Except as herein specifically admitted the averments of said paragraph IX are denied.

X

(a) Interveners admit, as alleged in paragraph X(a) of the complaint, that upon petition by Interveners for reconsideration of the order dated July 11, 1939, hereinabove referred to, the full Commission, after oral argument, issued its order dated January 24, 1941. Interveners deny that said order of January 24, 1941, reversed the previous order of July 11, 1939, and allege that although said earlier order was modified in respect of limiting conditions placed upon the authority thereby granted, said earlier order otherwise remained in full force and effect.

(b) Interveners admit, as alleged in paragraph X(b) of the complaint, that upon Interveners' petition the Com- [fol. 191] mission assigned all the proceedings here in-

volved for further hearing before an Examiner for the sole purpose of determining whether conditions previously imposed should be modified. Interveners deny that in thus granting a further hearing the Commission acceded to plaintiffs' request for a consolidation of the proceedings. They further deny that the action of the Commission in limiting the scope of the hearing was arbitrary and capricious or denied plaintiffs a fair and reasonable hearing, or was otherwise unlawful. They aver that in the hearings before the Joint Boards plaintiffs had been accorded full opportunity to adduce all evidence relevant to the issues in these proceedings, that the plaintiffs were not entitled to a further hearing, and that accordingly the subject matters to be considered at the reopened hearing were within the sole discretion of the Commission.

Except as herein specifically admitted the averments of said paragraph X(b) are denied.

XI

Interveners admit, as alleged in paragraph XI of the complaint, that the United States Department of Justice was permitted to intervene and appeared at the further hearing; but allege that said intervention and appearance are not relevant or material to any issue in this cause. They further aver that the allegations quoted in said paragraph XI of the complaint from the petition of the Department of Justice, Anti-Trust Division, to intervene, were and are untrue in fact insofar as concerned any legitimate issue before the Commission in the proceeding before it, and presented no tenable ground for intervention by said Department of Justice or justifiable reason for denial by [fol. 192] the Commission of the several applications of Interveners.

Interveners further admit that plaintiffs American Trucking Associations, Inc., and other motor carriers appeared at said further hearing and endeavored to present evidence pertaining to many subjects beyond the scope of the hearing as limited by the Commission's order, that the Commission's presiding Examiner refused to receive the evidence so offered, that petitions for further hearing were filed as in said paragraph XI set forth, and that by report and order dated July 6, 1942, the full Commission modified the conditions theretofore imposed upon Interveners' mo-

tor carrier operations by its previous order of January 24, 1941. Except as herein admitted the averments of said paragraph XI are denied.

XII

Interveners admit, as alleged in paragraph XII of the complaint, that the aforementioned order of the Commission dated July 11, 1939, conditioned the issuance of the certificate therein authorized upon compliance by Interveners with Sections 215 and 217 of the Interstate Commerce Act, but deny that the order of the full Commission of January 24, 1941, insofar as it related to Interveners, contained said condition. They further admit that the order of the full Commission of July 6, 1942, like the said order of January 24, 1941, excluded said requirement, for the reason that when said orders were issued Interveners had already complied with the provisions of said sections of the Act. Except as herein admitted, the averments of said paragraph XII are denied.

Further answering said paragraph Interveners allege that Sections 216(e) and 204(c) of the Interstate Commerce Act provide in part as follows:

[fol. 193] "Section 216(e). Any person, organization, or body politic may make complaint in writing that any * * * practice, in effect or proposed to be put into effect, is or will be in violation of this section or of Section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any * * * practice * * * whatsoever of such carrier or carriers affecting such rate, fare or charge * * * is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential, it shall determine the lawful * * * practice thereafter to be made effective * * *."

"Section 204(c). Upon complaint in writing to the Commission by any person, * * * organization, or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier * * *, has failed to comply with any provision of this Part, or with any requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation

that the motor carrier * * * has failed to comply with any such provision or requirement, the commission shall issue an appropriate order to compel the carrier * * * to comply therewith."

Plaintiffs have filed no complaint with or otherwise sought relief from the Commission for the alleged failure of the Commission to require Interveners to comply with said Sections 215 and 217, or for the alleged prejudice to plaintiffs claimed to have resulted therefrom, and the plaintiffs having thus failed to exhaust their remedy before the Commission provided by the foregoing provisions of the Interstate Commerce Act, this Court may not take cognizance or adjudicate in respect of said alleged violations.

XIII

Interveners deny the averments of paragraph XIII of the complaint.

Further answering said paragraph, Interveners allege that plaintiffs have filed no complaint with or otherwise sought relief from the Commission for the alleged failure of the Commission to require Interveners to comply with the provisions of Section 220 of the Interstate Commerce [fol. 194] Act, or for the alleged prejudice to plaintiffs claimed to have resulted therefrom, and the plaintiffs having thus failed to exhaust the remedy provided by Section 204(c) of said Act hereinabove referred to, this Court may not take cognizance or adjudicate in respect of said alleged violation.

XIV

Interveners deny the averments of paragraph XIV of the complaint.

Further answering said paragraph Interveners aver that if in fact plaintiffs suffered injury in the respects set forth in said paragraph, whether such injury required or warranted the denial of the Interveners' applications rested in the sound discretion of the Commission, and that, the Commission having considered and decided such matters upon substantial evidence, its action is final and cannot be disturbed in a judicial proceeding.

XV

Further answering the complaint Interveners allege:

(a) As found by the Commission, the purpose and effect of Interveners' motor carrier operations are to improve their service by coordinating rail and motor operations, using their rail lines for long distance transportation and their motor trucks to deliver and distribute small shipments carried in less-than-carload lots to and from stations at which the rail cars are loaded or unloaded, or to transport such shipments by highway between nearby stations for short distances. The findings of the Commission that the public and the railroad would derive material advantage from such coordination and that such coordination [fol. 195] would be in the public interest are fully set forth in the Commission's reports herein involved.

For the purpose of effectuating improvement in their service as hereinabove recited Interveners selected certain segments of the Seaboard system on which this type of service was especially desirable and practicable, and applied to the Commission for certificates authorizing the motor carrier operations paralleling such segments. The contiguity of certain of the routes thus selected was wholly fortuitous, and at the hearings conducted by the Joint Boards the evidence for the Interveners showed without contradiction that, with a few minor exceptions, each route was designed to serve only the territory embraced within its termini, and was to be operated separately and independently, and that integration of the contiguous routes or continuous operation over connected routes was neither proposed nor intended.

Since the functioning of each of Interveners' proposed motor carrier routes was self-contained and independent the issues involved in each of the proceedings were wholly unrelated. Nevertheless plaintiffs, as protestants at the Joint Board hearings of Interveners' applications, persistently disregarding the uncontradicted evidence to the contrary, asserted that Interveners' applications constituted a unified project contemplating through and continuous service over contiguous routes, that the proposed operations therefore involved three or more states, that the Joint Boards hearing the applications, composed of one representative from each state traversed by the respective

separate routes, were improperly constituted under the provisions of Section 205 of Part II of the Interstate Commerce Act, and that the hearings should be consolidated and assigned to an Examiner or to differently constituted [fol. 196] Joint Boards. At each hearing, moreover, one or more of the plaintiffs sought to introduce evidence of their operations and the competitive effect of Interveners' proposals in territory removed from and not related to the particular segment then under consideration.

Interveners aver that in the light of the limited scope and function of their proposed operations, heretofore described, the proposals involved in each of their applications were properly regarded as separate projects unrelated to any other, that the composition of the Joint Boards, formed of one representative from each state traversed by the respective separate routes, conformed to the requirements of Section 205 of Part II of the Interstate Commerce Act, that evidence relating to territory other than that traversed by the route for which authority was sought in the applications immediately under consideration was properly excluded, and that the averments of the complaint, alleging that the several applications constituted in fact and substance one application for integrated operating rights and, filed separately, had the effect of concealing the true nature of the applications and of evading the statutory requirements for a hearing, are wholly without factual support and are directly contradicted by the undisputed evidence of record.

(b) In composing the Joint Boards of one member from each state traversed by the route proposed in each of Interveners' separate applications, without regard for other routes for which applications were concurrently pending or had been previously filed by the same applicants, the Commission pursued an administrative interpretation of Section 205 of Part II of the Interstate Commerce Act which it has consistently followed in its administration of [fol. 197] said Part. The Commission is the body charged by law with administration of the Motor Carrier Act and its practical interpretation of the requirements of that Act in respect of the designation of the agency or agencies to conduct hearings on its behalf ought not to be disturbed by the court in this proceeding.

(c) The applications of many, if not all, of these very same plaintiffs for certificates authorizing extensions of their existing trucking operations which, in connection with their established routes, permitted through service in more than one state have been heard by Joint Boards composed of a member of the single state in which the proposed extension was situated. Having thus invoked and enjoyed the benefits of the identical procedure the legality of which they are here challenging, plaintiffs do not come into court with clean hands and are therefore not entitled to the extraordinary equitable relief which they seek.

(d) All evidence material to any legitimate issue that could have been adduced if all of the separate hearings of Interveners' applications had been consolidated was received by the Joint Boards and was submitted to and considered by the Commission before its decision was rendered. Hence plaintiffs suffered no injury or prejudice from the composition of the Joint Boards attacked by the bill of complaint, or from any other matter herein complained of.

XVI

Further answering the complaint Interveners allege that the relief sought herein is barred by the laches of the [fol. 198] plaintiffs. As set forth in paragraph IV of this answer, Interveners' motor operations here involved were originally authorized in part by Certificates issued by the Commission on September 30, 1939, and in part by an additional Certificate issued on April 4, 1940. The issues herein presented had been raised in the hearings before the Joint Boards, and from and after the issuance of the several Certificates hereinbefore in this paragraph referred to the remedy now sought was available to the plaintiffs through timely institution of suit to set aside and annul the said Certificates. This suit is brought more than four years after the issuance of all the said Certificates with the exception of the Certificate dated April 4, 1940, as to which the plaintiffs have delayed more than three years. In the period intervening between the issuance of the said Certificates and the filing of this action, and in reliance upon said Certificates, Interveners have invested in excess of $56,000 in equipment used in motor operations authorized by the said Certificates, have by means of said operations furnished improved transportation to the public served by

them for which there is no adequate or satisfactory substitute, and, through said operations, have dispensed with the need for the use of large numbers of railroad freight cars in the handling of the traffic now transported by their truck service. Should the relief herein sought be granted Interveners would suffer serious injury in that their investment in equipment would no longer serve any useful purpose, the public would be deprived of an established and improved form of service, an additional burden would be placed upon Interveners' railroad equipment, at a time when the demands for all forms of transportation service [fol. 199] are taxing the capacity of both rail and motor carriers, and Interveners would be compelled to attempt to replace the motor vehicles now in use with freight cars which are difficult if not impossible to obtain. If such cars should not prove available Interveners could provide no substitute for the service heretofore rendered with motor vehicles. Hence, by reason of the failure of plaintiffs to bring timely action, for which the complaint offers no reason or explanation, and in view of the intervening material changes in the position of Interveners and of the shippers and receivers of freight transported by them, now to grant the relief sought would cause Interveners and the public irreparable injury which would not have occurred had plaintiffs promptly pursued their remedies.

XVII

Interveners have not answered the allegations of the complaint made by or in behalf of Southern Motor Carriers' Rate Conference for the reason that said Southern Motor Carriers' Rate Conference has withdrawn as a plaintiff, as shown by amendment to the bill of complaint, and is no longer a party to this cause, and said allegations are therefore immaterial and irrelevant to any matter herein in issue.

Wherefore, these Intervening Defendants pray that the complaint be dismissed at the cost of the plaintiffs.

W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles,
Attorneys for Intervening Defendants, Seaboard
Air Line Railway Building, Norfolk 10, Virginia.

[fol. 200] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION No. 1—Filed May 3, 1944

With respect to the sufficiency of the interest of American Trucking Associations, Inc., and other plaintiffs to qualify as proper plaintiffs herein, and for that limited purpose only, it is stipulated and agreed by and between said plaintiffs and Intervenors, Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, that one or more motor carrier plaintiffs operate in the territory served by each of the routes over which operation is authorized by the certificates of the Interstate Commerce Commission herein sought to be annulled, suspended and set aside.

J. Ninian Beall, Attorney for Plaintiffs. W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

[File endorsement omitted.]

[fol. 201] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION No. 2—Filed May 3, 1944

It is stipulated and agreed by and between American Trucking Associations, Inc., Interstate Commerce Commission, and Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, that said Receivers, by timely action on their part, filed with the Interstate Commerce Commission, as a part of their tariffs publishing charges for the transportation of less-than-carload shipments by rail, a provision that the rates therein published shall apply to the transportation of less-than-carload shipments by motor vehicle in substitution for rail service wherever such substituted service is provided; that the points to and from which said

substituted service is provided by said Receivers are designated in a tariff concurrently filed with the said Commission known as Kipp's National Substituted Freight Service Directory No. 1-D, I. C. C. No. A-3503, M. F.-I. C. C. No. A-150, and that said provisions in the rate tariffs and the said National Substituted Freight Service Directory were filed and published by the said Receivers as in accordance with the requirements prescribed by the Interstate Commerce Commission governing the filing of tariffs by motor carriers in Ex Parte 129, 232 I. C. C. 683.

It is further stipulated and agreed that said tariffs are applicable to the substitution of motor carrier service for rail carrier service for shipments receiving a prior or sub-
[fol. 202] sequent movement by rail as well as to shipments moving entirely by motor carrier service operated by said Receivers.

It is understood and agreed that nothing herein shall preclude the said American Trucking Associations from contending that the said requirements of the Interstate Commerce Commission exceeded its powers under the Interstate Commerce Act or shall prevent the said Commission or the said Receivers from contending that the averments of the complaint herein respecting the failure and refusal of the said Commission to require the said Receivers to comply with Section 217 of the Interstate Commerce Act are not cognizable by the Court in this cause.

J. Ninian Beall, Attorney for Plaintiffs. Daniel H. Kunkel, Attorney for Interstate Commerce Commission, Defendant. W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

[File endorsement omitted.]

[fol. 203] In United States District Court

[Title omitted]

Stipulation No. 3—Filed May 3, 1944

It is stipulated and agreed by and between American Trucking Associations, Inc., Interstate Commerce Commis-

sion and Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, that upon petition by said Receivers to the Interstate Commerce Commission showing that the accounts maintained by said Receivers do not segregate the revenues and expenses of their motor carrier operations from the revenues and expenses of their rail operation, a true and correct copy of which petition is attached hereto and made a part hereof, the said Commission by order issued pursuant to Section 220 of the Interstate Commerce Act, a true and correct copy of which is attached hereto and made a part hereof, authorized the said Receivers, in accordance with its general practice in such cases, to include in their reports required by said Commission of common carriers by railroad a statement of all revenues derived from and expenses incurred in their motor carrier operations, and to that extent relieved the said Receivers from reporting separately the revenues and expenses of their rail and motor carrier operations.

It is understood and agreed that nothing herein shall preclude the American Trucking Associations, Inc., from contending that the said order of the Interstate Commerce Commission exceeded its powers under the Interstate Commerce Act, or shall prevent the said Interstate Commerce [fol. 204] Commission or the said Receivers from contending that the averments of the complaint herein respecting the failure and refusal of the Commission to require said Receivers to comply with Section 220 of the Interstate Commerce Act are not cognizable by the Court in this cause.

J. Ninian Beall, Attorney for Plaintiffs. Daniel H. Kunkel, Attorney for Interstate Commerce Commission, Defendant. W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

[File endorsement omitted.]

[fol. 205] Copy

Seaboard Air Line Railway. L. R. Powell, Jr. and Henry W. Anderson, Receivers.

Finance and Accounting

R. Parke Jones, Chief Finance and Accounting Officer.

Norfolk, Va., January 19, 1938.

5257—5817—5898

Mr. W. P. Bartel, Secretary,
Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

Reference is made to order of the Interstate Commerce Commission, dated November 29, 1937, prescribing, effective January 1, 1938, a Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property subject to the Motor Carrier Act of 1935; also Commissioner Joseph B. Eastman's letter of December 21, 1937, addressed to Mr. E. H. Bunnell, Vice-President, Association of American Railroads.

The Receivers of the Seaboard Air Line Railway engage in motor operation over routes paralleling certain parts of its line of railroad, the service furnished thereby being in conjunction with and auxiliary to its rail line operations. No separate corporation is involved. Separation of the revenues earned by motor and rail operations, respectively, has not been maintained, the entire revenues from both rail and motor operations being accounted for under the Uniform System of Accounts for Steam Roads prescribed by the I. C. C.

The order of the I. C. C. dated November 29, 1937 prescribing a Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property subject to the Motor Carrier Act of 1935 defines a Class I carrier, as referred to in that order, as a carrier having average gross revenues of $100,000 or over annually from its motor operations for the three years immediately preceding January 1, 1938. As there has been no separation of the revenues

derived by Seaboard Air Line Railway from motor operations and rail operations, ascertainment as to whether such motor operations fall within the Class I classification of motor carriers is not possible for the reason that a record has not been kept of the traffic handled by our trucks in a way that would enable us to identify such traffic with the waybills.

In conformity with the suggestion contained in Commissioner Joseph B. Eastman's letter of December 21st, above referred to, application for exemption from the requirements of the Uniform System of Accounts prescribed for Class I Common and Contract Motor Carriers effective January 1, 1938 is hereby made, but for the reasons given in the next preceding paragraph such application should not be considered as implying that our operations are subject to such accounting regulations.

Very truly yours, R. P. Jones, Chief Finance and Accounting Officer.

[fol. 206] Copy

Interstate Commerce Commission

Ex Parte No. MC 17

Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property

In the matter of granting temporary examination, under certain conditions, from the requirements of the Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property, to carriers which perform steam or electric urban or interurban railway service and motor carrier service under the same corporate entity:

Present: Joseph B. Eastman, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the petition of Seaboard Air Line Railway, dated January 19, 1938, in the above-entitled matter:

It is ordered, that the said Seaboard Air Line Railway be, and is hereby, exempted from the requirements of the Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property, effective January 1,

1938, until the further order of the Commission, provided, however, that the accounts of the said Seaboard Air Line Railway are maintained in conformity with the accounting system described in said petition.

Dated at Washington, D. C., this 28th day of January, A. D. 1938.

By the Commission, Commissioner Eastman.

W. P. Bartel, Secretary. (Seal.)

[fols. 207-211] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION No. 4—Filed May 3, 1944

It is stipulated and agreed by and between American Trucking Associations, Inc., and Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, that Flamingo Truck Lines, Great Southern Trucking Company, Central Truck Lines and K. & L. Transportation Company each operate over routes which traverse two or more states; that from time to time each of said motor carriers has applied for and obtained from the Interstate Commerce Commission certificates authorizing extensions of its system, which extensions lay wholly within a single state but connected with and were to be operated as an integral part of previously established routes of said motor carriers for the transportation of traffic in through movement between two or more states; that the application for each such extension was referred by said Commission to a Joint Board composed solely of one member from the state in which such extension was situated; and that said motor carriers did not protest against the composition of the Joint Boards to which said proceedings had been referred.

J. Ninian Beall, Attorney for Plaintiffs. W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

[File endorsement omitted.]

[fols. 212-229] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

AMERICAN TRUCKING ASSOCIATIONS, INC., et al.,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

Transcript of Hearing—Filed June 16, 1944

Before: Hon. Armistead M. Dobie, United States Circuit Judge; Hon. John Paul, United States District Judge; Hon. A. D. Barksdale, United States District Judge

Richmond, Virginia, June 1, 1944

[fol. 230] R. W. ROGERS, called as a witness on behalf of the intervening defendants, and being first duly sworn, testified as follows:

Examined by Mr. Abeles:

Q. Mr. Rogers, will you state your name.

[fol. 231] A. R. W. Rogers.

Q. And your occupation?

A. Assistant General Manager for the Receivers of the Seaboard Air Line Railway, Norfolk, Virginia.

Q. Are you familiar with the functions of the Receivers' motor carrier services?

A. I am.

Q. Did you participate in any of the hearings which were held by the Interstate Commerce Commission for the purpose of the Certificates which are under attack in these proceedings?

A. I participated in five of the hearings.

Q. You are then thoroughly familiar with the purpose which the Receivers hope to attain by the operation of the motor carrier services?

Mr. Dumbauld: I object to that question, if the Court please, as calling for a conclusion of some other person and the record will speak for itself when and if it is introduced here and it is the introduction of the record that is a precondition of this witness' testimony.

Judge Dobie: Let me say here that if we are going to have objections to practically every question that is asked, it is going to take a very long time. I wonder if you would [fol. 232] not in some way make a general objection and allow us to pass on those things as a whole. Will that be satisfactory? I see what you mean. To say he is thoroughly familiar with everything is a pretty wide order but won't you admit that he is pretty familiar with them at this stage?

Mr. Dumbauld: That is no doubt correct, Your Honor. Will it be understood that we have a general objection to all the testimony of the witness and that any specific objections I will make. Also, as I said before, there is an additional objection to anything that deals with matters that were discussed before the Commission and I will endeavor to limit any specific objections to anything else.

Judge Dobie: That was a pretty broad question.

Mr. Abeles: I was trying to qualify him.

Judge Dobie: Won't you admit this man is qualified to testify on these matters?

Mr. Dumbauld: Yes, Your Honor.

By Mr. Abeles:

Q. In order to show the action which was taken by the Receivers on the basis of the authority granted following the issuance of the certificates of public convenience and necessity covering the Receivers' motor carrier operations, will you describe as briefly as possible the purposes that [fol. 233] those motor carrier operations served?

Mr. Dumbauld: I don't like to keep on objecting.

Judge Dobie: I am not at all impressed with what you are trying to do. Why not limit the testimony to what the Seaboard Air Line has done on the strength of these orders?

Mr. Abeles: I don't want to impose on the wishes of the Court but it seems to me in order to make this question of laches perfectly clear, it is essential to show to the Court what the purposes to be accomplished by these operations were in order to show the changes.

Judge Dobie: Isn't that in the record?

Mr. Beall: There are several hundred pages of that in the record.

Judge Dobie: Let him say what the Seaboard did on the strength of these orders and I think the gentlemen are

willing to concede that Mr. Rogers is familiar with these proceedings.

By Mr. Abeles:

Q. How would the removal of the truck service affect the transportation facilities of the Receivers?

A. We are handling the largest volume of business in the history of the railroad. That volume began to grow late in the fall of 1939 and accelerated in 1940 and has continued [fol. 234] to accelerate to this date. In 1940 our gross business was approximately $48,490,000. In 1943 it climbed to $137,258,000. Our freight train miles increased approximately 98 per cent. Our freight net ton miles increased 200 per cent. Our passengers carried one mile increased 690 per cent.

To organize for this increase in business, to prepare an operating plant and an operating machine to meet this transportation burden, we started in to expand our facilities, to expand our service and to build for it.

Mr. Dumbauld: May it please the Court, I would like to move that the answer be stricken as unresponsive, in that the witness is telling about the general development of the railroad business due to increased traffic under war time conditions.

Judge Dobie: I think we know that pretty well.

Mr. Dumbauld: I wish it would be possible for the witness to testify as to just what, if anything, was done as a result of these particular orders that we have under attack.

Judge Dobie: We know about the increase that was put on the railroads during the war.

Mr. Abeles: I think we are dealing with a specific situation here. I think the witness is entitled to show the factual background of the changes that were made by the Receivers [fol. 235] as a result of the inauguration of the motor transportation and, in order to do that, the conditions which today would be affected by the removal of it. I assure you that he is going to be very brief and I think that we are wasting more time here by constant objections than it would take for the witness to testify.

Mr. Dumbauld: I hate to be objecting but I do wish the witness would get to the matter which I understand he is to testify to which is what, if anything, was done by the railroad in reliance——

Judge Dobie: Suppose you be very brief on that.

Judge Paul: Mr. Abeles, generally what we have in mind, speaking for myself—you are on the question of laches now. We want the witness to say something like this. Beginning in 1939, or whenever it was that the Interstate Commerce Commission first permitted us to do so and so, we went out and bought a lot of trucks and we organized that feature of our transportation, we employed so many persons, if all of these things were true; and we did this and that, showing the expenditures and the obligations and burdens that you incurred while these other people, as you say, sat quietly and allowed you to do it. That is what we are interested in.

[fol. 236] Mr. Abeles: I understand, Your Honor, but the fact that we did those things would not in and of itself support our plea of laches. We must show that we were injured and the extent to which we were injured, and that is what the witness is addressing himself to now. I assure you that in my judgment, at least, nothing he is saying is immaterial or even inconsequential.

Judge Dobie: Be very brief on that. We know that a burden has been imposed on the railroads by the war.

A. In organizing for this these trucking authorities were a part of the machine and it was with these trucking routes as a component part of our operations that we organized. If we had not had the trucks our procedure for the construction of facilities, for the organization of our service, would have gradually developed along different lines. We would very probably have in this period of time devoted ourselves to building house tracks or sidings that would let us get these merchandise trains, that we would have to use in the absence of the trucks, off of the main line so as to avoid interference with the service that we were relieved of by the use of the trucks. In this period of years we have spent millions of dollars. In spending that we spent it as a con-

[fol. 237] structive plan, based upon the use of the trucks.

By Mr. Abeles:

Q. Mr. Rogers, can you give us some specific examples of the changes that have been made in our transportation set-up as the result of the inauguration of the truck service?

A. Well, it could be a vast amount of detail, Mr. Abeles.

Q. Give us one or two.

A. One specific instance is in connection with the trucking service at Greenwood, South Carolina, to Great Falls, South Carolina, in what is known as the Georgia Division. One of the things we have done in the interest of the war effort is to change the lay-over of the crew from Great Falls, South Carolina, to Chester, South Carolina, moving these men; moving the terminal for the engines, and operating out of Chester instead of out of Great Falls. This is because we are able, with the trucks, to put the merchandise and the express into Great Falls to better advantage and without it we would have to go back to the original plan.

Q. Have you any other example?

A. Yes, the Fernandina-Jacksonville and Fernandina-Yulee service I can cite as a specific instance because in recent weeks where there was an inland waterway accident that closed the highway drawbridge we found it necessary to add freight service—train service—clearly indicating [fol. 238] that without the trucks we would again have to organize our overall train service to provide that, and during this period of time since 1939 we have disposed of some light weight equipment, some gas-electric cars that we very probably would not have disposed of had we been faced with the necessity of maintaining this type of service.

Q. Then, as I understand it, Mr. Rogers, it is your position that the situation of the Receivers would have been materially different had the plaintiffs instituted their suits shortly after the issuance by the Commission of the original reports and orders of 1939 and 1940 instead of waiting for the present time?

Mr. Dumbauld: Just a minute, if the Court please. I think that clearly calls for a conclusion.

Judge Dobie: I think that is in the nature of a conclusion.

Mr. Abeles: I am trying to summarize and I am leading up to another question.

Mr. Beall: If Your Honors please, I want to make one further objection to this testimony, now that I have heard some of it. Under Section 210 of the Motor Carrier Act, the Interstate Commerce Commission has power to grant emergency certificates for the duration of the war without a hearing to accommodate all of these situations which this [fol. 239] witness is describing. If this court were to set aside all of the orders that the Commission had entered in any of these cases, the Commission could in five minutes

issue an emergency order for the war that would take care of all the war situation.

Judge Dobie: You can bring that out in your argument.

By Mr. Abeles:

Q. Will you briefly outline the respects in which the Receivers' position would have been different had this suit been brought shortly after the issuance of the 1939 orders instead of waiting for the present time?

A. We would have organized and built our operating set-up, including tremendous quantities of facilities, on an entirely different basis to meet the then changed conditions. Just what we would have done or how we would have handled it would require a vast amount of study. It is a question I cannot answer in detail but definitely it would have been organized on a different basis.

By Judge Paul:

Q. You mean it would have been organized on a different basis provided the suit had been successful?

A. No, Judge, we would not have proceeded.

Q. Of course, you would not have proceeded until the suit was terminated?

[fol. 240] A. That is correct.

Q. Then your organization on a different basis to disregard the use of trucks would have been dependent on the outcome.

Judge Dobie: Do you want to introduce any figures about equipment and things of that kind by another witness?

Mr. Abeles: You mean the cost of equipment?

Judge Dobie: Yes.

Mr. Abeles: No, we are not pressing that point.

Cross-examination.

By Mr. Beall:

Q. Mr. Rogers, you received from the Interstate Commerce Commission a certificate to conduct an operation between Gaston and Garnett, South Carolina, did you not?

A. Yes, sir.

Q. Are you operating it?

A. We are not.

Q. Did you ever operate it?

A. Yes.

Q. When did you stop?

A. August 1, 1942.

Q. You have a certificate between McBee and Sumter, [fol. 241] do you not?

A. We do.

Q. Are you operating it?

A. We are not.

Q. Did you ever operate it?

A. We did.

Q. When did you stop?

A. August 1, 1942.

Q. You have a certificate between Henderson and Raleigh?

A. We have.

Q. Are you operating it?

A. We are not.

Q. Did you ever operate it?

A. We did not.

Q. You have a certificate between Monroe and Rutherfordton, North Carolina?

A. We have.

Q. Are you operating it?

A. We are not.

Q. Did you ever operate it?

A. We did not.

Q. You have one from Richmond, Virginia, to Henderson, North Carolina?

A. We have.

Q. Are you operating it?

[fol. 242] A. Not the entire length, no.

By Mr. Dumbauld:

Q. I believe you testified that your company had spent considerable money in a different manner than it would have done if it had not had the motor carrier operating authority; is that correct?

A. That is correct.

Q. That you would have constructed additional sidings and trackage and other rail facilities if you had not contemplated using the motor service; is that right?

A. There would have been some changes in what we have done and some additional things perhaps that we would have done.

Q. So that the expenditures you have made have been for a useful purpose, have they not?

A. They have.

Q. You do not have any excess facilities on hand at the present time, do you?

A. No.

Q. And the only thing is that you would have had additional rail facilities if you had not relied on the possibility of using motor vehicle service?

A. That is largely correct.

Mr. Kunkel: If the Court please, I am a bit confused in [fol. 243] this case as to Mr. Dumbauld's objection and I think we ought to have it clear on the record in what capacity he is now appearing in this case. It seems rather strange to me that the defendant would be objecting to a defense. If he is appearing here in his capacity as the representative of the Antitrust Division and their policies, that is one thing, but if he is here representing the sovereign United States, then I think these questions are entirely out of order, that he has exhausted his function when he has admitted the allegations of the bill.

Judge Dobie: Do you have anything to say? We will consider all of that in weighing the testimony.

Mr. Dumbauld: I do not think it is necessary to go into that point, if Your Honors pleases. It is also brought up in the Seaboard brief but the answer is very simple and this is really quite irrelevant, in my opinion. Under the statute all suits to set aside orders of the Interstate Commerce Commission must be brought against the United States which is an indispensable party defendant and now certainly it would be a very unique thing if a party called upon to plead in the case did have the election whether to affirm or to deny or admit or deny and I think it is also very clear [fol. 244] that it is the duty of the attorneys representing the Government to be particularly solicitous of the public interest, including all the private parties; in other words, as in the Vierak case where it was pointed out that we should acquiesce in just claims as readily as we would resist

unfounded ones, so I think there is really nothing to all of this.

Judge Dobie: We will consider that.

Redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, Mr. Beall questioned you as to five routes with respect to which you testified that the operation had either been suspended or had never been initiated. Will you explain to the Court why that situation prevailed?

A. Two of the routes, Gaston-Garnett and McBee-Sumter routes, were inaugurated very promptly after the original order. The Raleigh-Henderson, the Monroe-Rutherfordton and Hamlet-Wilmington were not inaugurated pending clarification of the prior and subsequent rail haul clause. When this was clarified by the orders of July 6, 1942, setting up the present key station provisions, we were then in the midst of the war. The Office of Defense Transportation had issued an order effective March 23, 1942, setting up a minimum of ten tons for l. c. l. carloading. Merchandise cars had to carry a minimum of ten tons. They issued [fol. 245] Defense Transportation Order No. 3, effective June 1, 1942, establishing certain restrictions on truck loading. That was followed by Office of Defense Transportation Order No. 17, effective August 1, 1942, relating to trucking miles. That order, while not applicable to the railroads, did inject or did establish a policy of the Office of Defense Transportation.

Q. What did that order require or request?

A. Curtailment of 25 per cent in trucking miles. In trying to maintain the minimum of 10 tons per car for l. c. l. loading and in complying with the maximum truck loading requirements, we had to reach some compromises as between the merchandise cars and the truck loads. In some instances we eliminated merchandise cars; in some instances we decided that it was to the best interest of the war transportation to eliminate trucking service. As to the lines that we had not established, we felt that we would be on very poor ground to undertake to establish new trucking service when the Office of Defense Transportation was asking us to curtail trucking service. So, working and trying to cooperate with the O. D. T. and the spirit and letter of their orders, we discontinued the trucking service

between Gaston and Garnett and the trucking service between McBee and Sumter and we did not establish these other three runs.

Q. Mr. Dumbauld asked you whether it was your state-
[fols. 246-259] ment that you had made certain changes in your transportation facilities as the result of the inauguration of your truck services and it is my recollection that you stated that there were certain things that had been done that would have been changed now had the truck services not been in operation and there were certain things that had not been done that would have been done. I take it you mean in the way of furnishing additional transportation facilities? Can we readily furnish those additional transportation facilities at the present time if these truck services are abolished?

A. We cannot readily do it, no.

Q. Why? Be as brief as you can.

A. Because of the manpower situation, the equipment situation, the shortage of cars, the shortage of locomotives and the shortage of manpower.

* * * * * * *

[fols. 260-364] Judge Dobie: I will say one thing for your brief; you will never be accused of handling the Interstate Commerce Commission with gloves.

Mr. Beall: I have great respect for the Interstate Commerce Commission. As a commission I think it is one of the best the country has ever had as individuals. As a commission I think they go wrong like everybody else does.

Judge Dobie: "Even the worthy Homer sometimes nods."

* * * * * * *

[fol. 365] IN DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 285

AMERICAN TRUCKING ASSOCIATIONS, INC., et al., Plaintiffs,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

J. Ninian Beall, Esq., S. W. Shelton, Esq., and Roland Rice, Esq., Counsel for Plaintiffs.

Edward Dumbauld, Esq., Special Asst. to Atty.-Gen. of U. S., and John V. Cogbill, Esq., Asst. U. S. Attorney, Counsel for the United States of America.

Daniel H. Kunkel, Esq., Counsel for Interstate Commerce Comm.

Thos. L. Preston, Esq., and Charles T. Abeles, Esq., Counsel for Receivers of Seaboard Air Line Ry. Co., Interveners.

OPINION—Filed July 17, 1944

DOBIE, *Circuit Judge:*

This is a civil action (28 U. S. C. A. §§ 41(28), 44, 45, 45(a), 46, 47, 48) in which we are asked to set aside certain orders of the Interstate Commerce Commission (hereinafter called the Commission) and to grant certain incidental relief. These orders of the Commission granted to Legh Powell, Jr., and Henry Anderson, Receivers of the Seaboard Air Line Railway Company (hereinafter collectively referred to as Seaboard) certificates of public convenience and necessity, authorizing Seaboard to engage in interstate operations as a motor carrier over 14 routes in the [fol. 366] States of Virginia, North Carolina, South Carolina, and Florida. Plaintiffs are the American Trucking Associations, Inc., (an organization formed in the interest of the highway trucking industry), and 6 motor carriers operating over the routes covered by the challenged certificates. Seaboard, by intervention, (28 U. S. C. A. §45(a)) has been joined as a party defendant.

The 14 applications of Seaboard for certificates, (with which we are concerned) were filed by Seaboard with the Commission (pursuant to the provisions of the Interstate Commerce Act, Part II, § 206, 49 U. S. C. A. § 306) at various times from February 23, 1937, to August 15, 1938. In due course, the Commission referred each application (severally and individually) to a Joint Board, composed of one member from each State in which there was any part of the operation covered by the specific application (49 U. S. C. A. § 305(a)).

The Joint Boards, after hearings on each of Seaboard's applications, issued reports, and appropriate certificates were, in every instance, granted by the Commission, subject to certain restrictions. One of these restrictions limited Seaboard's motor service to that which was strictly auxil-

iary to Seaboard's rail operations—that is, all transportation by motor was forbidden under the certificates unless there was a prior or subsequent shipment, in each instance, by rail. Seaboard, contending that this prior-or-subsequent-rail-haul restriction seriously impaired the value and utility of the certificates, petitioned the Commission for a rehearing. This was granted by the Commission and the case was re-opened only for oral argument on this condition. Then the Commission eliminated the compulsory-rail-haul condition from the certificates and substituted therefor a so-called "key-station-plan," which restricted Seaboard's motor service in connection with the designated [fol. 367] key-points. Later again Seaboard sought and obtained another rehearing, limited to modification of the key-points as these had been prescribed by the Commission. At this juncture, the Antitrust Division of the Department of Justice intervened, claiming that Seaboard's motor operations would bring about a monopoly and strangulation of the independent motor trucking industry. This stage of the proceedings marks also the initial appearance of the American Trucking Associations, Inc., one of the plaintiffs in the instant civil action. The Commission modified certain portions of the key-point restrictions.

We now proceed to consider the questions raised in this case which we deem are of sufficient merit to deserve discussion.

1. Constitution of Joint Boards—Consolidation of the Individual Applications

Plaintiffs vigorously attack the assignment of each application to a Joint Board, composed of one member from each State in which a motor service was sought in that application. This procedure satisfied the Motor Carrier Act, Part II, §205(a) and followed a well-established administrative practice. See United States v. American Trucking Associations, Inc., 310 U. S. 534. In the absence of fraud (which is discussed later), the Commission, in determining the constitution and membership of the Joint Board, has consistently followed the scope of the proposed operations as these operations are designated and described in the application. See Argo and Collier Truck Lines Common Carrier Application, 27 M. C. C. 563, 566; and Atlantic Coast Line Railroad Company Extension of

Operation, 30 M. C. C. 490, 491-2. Courts should give due weight to long continued administrative practice. See United States v. Moore, 95 U. S. 760; Norwegian Nitrogen Co. v. United States, 288 U. S. 294, 315. The Commission [fol. 368] has often pointed out the inherent administrative difficulties in enforcing the Motor Carrier Act under any other interpretation. See 17 M. C. C. 413, 416-17. Even when minor defects in the composition of the Joint Boards do appear, the courts have been (and should be) slow to set aside an order of the Commission on this ground. Empire Trails, Inc. v. United States, 53 F. Supp. 373; North Coast Transportation Co. v. United States, 54 F. Supp. 448.

Section 205(a), Part II, of the Motor Carrier Act provides, in part:

> "The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three states, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three states, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, * * *. The joint board to which any such matter is referred shall be composed solely of one member from each state within which the motor carrier or brokerage operations involved in such matters are or are proposed to be conducted * * *. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon; * * *"

Early and late, before the Joint Boards and before the Commission, timely motions and petitions were filed, praying for a stay of the proceedings and for a consolidation of the several applications, so that these applications could be referred to, and considered by, "properly constituted"

Joint Boards, consisting of one member from each State in which an operation was desired under any of the applications. These motions and petitions for consideration were denied by the Joint Boards and the Commission.

[fol. 369] Plaintiffs contend that this action was arbitrary and capricious and forms a ground for the setting aside by us of the Commission's orders. We find no merit in this contention. Such motions to consolidate are addressed to the sound discretion of the Commission. And we can discern in this record no warrant to justify us in holding that here the Commission has either abused this discretion or acted arbitrarily and capriciously. From all the testimony before it, the Commission was in a peculiar position to judge accurately whether the service sought under totality of the applications was of such unified nature and such comprehensive scope as to call for consolidation of these applications and for their reference to a Joint Board which would be differently constituted. It is not without importance, in this connection, that, after these certificates were issued, some of the services thereunder authorized have never been inaugurated, while others, after being commenced by Seaboard, were subsequently abandoned.

2. Exclusion of Evidence—Fair Hearing

Protesting motor carriers next complain of the refusal of the Joint Board to receive and consider certain evidence offered by protestants. As a result, we are told: "Every effort of plaintiffs to have the proceedings conducted under any semblance of a fair, reasonable and statutory hearing was summarily rejected by the Commission."

This complaint of plaintiffs is cognate to the Commission's refusal to consolidate the several applications of Seaboard. This proferred evidence covered a wide field and much of it might have been relevant had the Commission consolidated the applications. This evidence seems to have been excluded by the Joint Boards on the ground that each Joint Board was necessarily limited to deciding upon, [fol. 370] and only upon, the particular application, or applications, before that Board.

Some evidence on the points which the protestants sought to develop did filter into the hearings before the

Joint Boards. The Commission had before it the reports of all the Joint Boards. When, therefore, the Commission decided against consolidation, against a reopening of the case and against a rehearing of the matters, with the applications considered together as a whole, we think this contention of plaintiffs falls to the ground. Then, too, it is open to very serious question whether this excluded evidence would have, if admitted, influenced the decisions of the Commission.

3. Use of Improper Criteria as to Public Convenience and Necessity

Very great stress is laid by plaintiffs on the contention that the Commission used false and improper criteria in arriving at its finding of public convenience and necessity in favor of Seaboard. It is urged upon us that the Commission substituted railroad economy and convenience for public necessity; that the Commission unduly favored Seaboard by characterizing the "hybrid" combination of rail and motor service as new and unique; and that the Commission utterly disregarded the clear fact that the territories in question were fully and completely served by existing motor carriers.

The simple answer to the first point is that the Commission did not base its finding of public convenience and necessity solely or even primarily upon railroad economy and convenience. That factor (quite properly, we think) was merely considered by the Commission as one (among many) elements that influenced its decision.

The second point is not to be answered as a question of juristic semantics—whether the co-ordinated rail and mo- [fol. 371] tor service is in every respect a "new" service. All that we need hold on this point is that the Commission could (as it did) consider that the proposed motor service contemplated in the applications of Seaboard was a co-ordinated rail-motor service and, on that account, differed rather widely from the application of a pure motor carrier (rendering exclusively motor service) and also from an application by a railroad for permission to inaugurate motor service in a territory and field quite separate and divorced from its rail operations. This appears to have been a well settled policy of the Commission. See Kansas City Southern Transport Co., Inc.—Common Carrier Applica-

tion, 10 M. C. C. 221, 235; Illinois Central Railroad Co.—Common Carrier Application, 12 M. C. C. 485, 495. Ample warrant for this, we think, can be found in many cases. We content ourselves with an extract from a very recent case decided by the United States Supreme Court.

Thus, in Thomson v. United States, 321 U. S. 19, 20-21, Mr. Justice Murphy said:

> "The motor trucks transport less than carload lots of freight in complete coordination with the rail service. The railroad instituted this additional method of transportation in order to furnish an improved and more convenient freight service to the public in certain areas of light traffic and in order to curtail car mileage and way-freight service. Motor vehicle transportation, in other words, is merely a new method of carrying on part of its all-rail freight business in which it had been engaged for many years."

The record does not support the contention that the Commission disregarded the ability of the independent motor carriers to furnish adequate service in the territories covered by Seaboard's applications. What the Commission did was to contrast this independent motor service with Seaboard's proposed coordinated motor-rail service, and then, in the light of this comparison, to weigh and appraise the elements and factors in each of the two types of [fol. 372] service. There is ample warrant in the record for the Commission's finding that, under proper criteria reasonably applied, public convenience and necessity would be best served by granting these certificates of public convenience and necessity to Seaboard.

4. Monopoly

The Commission found that the granting of these certificates to Seaboard would not create, or tend to create, a monopoly. And, further, the Commission stated: "Nor does it appear from the records made in these cases that there will be any great diversion of traffic from independent motor carriers." 17 M. C. C. 432. "Nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor carrier field." 34 M. C. C. 444. There is ample evidence to support these findings. And, as the Commission aptly stated: "One competitive

carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest." 28 M. C. C. 10. We call attention again (as against the contention that the Seaboard contemplated a unified service paralleling almost its entire line for the purpose of creating a monopoly) that some of the services authorized by the certificates have never been inaugurated, while others of these services, once inaugurated, have been subsequently abandoned.

It seems clear that the enforcement of the federal anti-trust laws is not a primary function of the Commission nor can any decision of the Commission preclude an action in the federal courts for the enforcement of these laws. This whole situation, involving the inter-relations of the Commission and the courts as to anti-trust legislation, is dis-[fol. 373] cussed at some length in the opinion of Mr. Justice Rutledge in McLean Trucking Co. v. United States, 321 U. S. 67.

5. Laches

Seaboard has interposed the defense of laches as a defense to this civil action. The basis of this defense is that plaintiffs have unduly delayed in bringing this action, that, in the interval between the granting of these certificates and the institution of this action, Seaboard has acquired equipment, spent money and made many changes in its transportation facilities.

It was understood between counsel that, at the hearing before us, the record before the Commission would not be introduced and that no oral evidence would be offered. Counsel for plaintiffs, however, insisted on introducing the Commission record, and no objection was made to this. Seaboard then claimed that it must offer some oral evidence on the changes in its facilities which had been made in the period between the granting of the certificates and the institution of the instant civil action. Counsel for plaintiffs and for the United States strongly objected to this evidence. One official of the Seaboard was permitted to testify and a motion to strike this evidence was made by counsel and taken under advisement by the Court.

We prefer to base our decision in this case upon the broader and more important considerations previously

discussed in this opinion. Accordingly, we do not feel called upon to pass upon either the validity of the defense of laches or the propriety of the oral evidence heard by this Court.

6. Fraud

Counsel for plaintiffs have interposed into this case a charge of fraud on the part of Seaboard. We are euphemistically told, though, that fraud here is used as a legal [fol. 374] concept and that any intention of charging any person connected with Seaboard with improper personal conduct is disclaimed. It is claimed, however: "The Commission exceeded its power and jurisdiction and acted arbitrarily and capriciously * * * In considering false and fictitious showings of convenience and necessity, deliberately fashioned by the applicant."

We might point out a slight inconsistency, in this connection, found in the complaint filed by plaintiffs. Thus, at one point in the complaint it is alleged: "The separate applications had the effect of concealing the true nature of the applications and of evading the statutory requirements for a hearing." While, in another place, the complaint states: "The extent and scope of the proposed operations were disclosed to the Commission through numerous applications."

The Commission took pains to state:

> "We now have the entire situation presented by the several applications before us in all of its aspects, following full and complete hearings." (17 M. C. C., 417.)

We content ourselves by observing that we find nothing whatever in this record either to warrant or to substantiate this charge, even in its euphemistic, legal connotation.

7. The Position of the United States in this Case

In every civil action to set aside an order of the Interstate Commerce Commission, the United States is, of course, a necessary party. When counsel for the United States appear and take part in the case, it is usually for the purpose of defending the order of the Commission, a coordinate branch of the federal government. In the instant case, however, counsel for the United States have confessed error, have admitted the allegations of the complaint and have asked this Court to grant the desired relief to plaintiffs.

[fol. 375] Seaboard's counsel tell us that the United States should not be heard in this anomalous role, which virtually amounts to stultification. See United States v. United States Gypsum Co., 53 F. Supp. 889.

We hold that the United States cannot confess error so as to make it binding upon us to grant the relief desired by plaintiffs. In McLean Trucking Co. v. United States, 321 U. S. 67, 69, error was confessed by the United States, yet the Supreme Court affirmed the decree of the three-judge District Court, refusing to set aside orders of the Commission. On the other hand, we were glad to consider the brief and oral argument of counsel for the United States, specially representing the Antitrust Division of the Department of Justice. The contentions advanced by these counsel we find to be lacking in substantial merit.

8. Separate Tariffs and Accounting for Motor Traffic

Plaintiffs complain that the Commission's order which failed to require Seaboard to file separate tariffs, and to keep separate accounts, for its motor traffic (apart from its rail operations) is a violation of the Interstate Commerce Act, Part II, §§ 217, 220, 49 U. S. C. A. §§ 317, 320, and constitutes unfair discrimination in favor of Seaboard and against plaintiffs.

These are matters primarily entrusted to the sound discretion of the Commission. See United States v. Trucking Co., 310 U. S. 344, 352; Board of Trade v. United States, 314 U. S. 534. And we should not here attempt to substitute our discretion (whatever action that may dictate) for the discretion vested in the Commission. It is conceded that this Court has no power to direct the Commission to issue an order directing Seaboard to file these separate tariffs and to keep these separate accounts. If, in actual [fol. 376] practice, it should develop that such discrimination is thereby effected, an ample administrative remedy is afforded in the shape of an application to the Commission. See Texas & Pacific Railway Co. v. Abilene Cotton Oil Co., 204 U. S. 426.

9. Reflections on the Interstate Commerce Commission

The printed brief of counsel for plaintiffs abounds in slurring remarks and exceedingly uncomplimentary references to the Commission. We quote a few of these. "To

escape this dilemma, they invented the doctrine of 'new service.'" "This hybrid monstrosity which is exclusively the brain child of the Interstate Commerce Commission * * *" "Truly the Commission's generosity to the railroads knows no bounds." "The Commission thinks it knows more about what is good for the country than Congress does. Therefore, the Commission has determined to handle the matter according to its own motions." "The Commission having decided to legislate in derogation of the will of Congress, it now goes through the fiction of a hearing and refuses to hear evidence." "The hearings which the Commission now holds on any railroad application for motor carrier rights are a farce. The matter has reached the point where no possible evidence could serve to show adequate existing services. No possible evidence could serve to overcome railroad desire and railroad convenience." "The 'hearings' are in effect, ex parte."

We find nothing in this record (or, for that matter, in the history of the Commission) that would justify such unrestrained language about an administrative body of rather unusual age and somewhat exceptional distinction. The language, we think, adds nothing to either the strength of the case of the plaintiffs or to the credit of their counsel.

[fol. 377] 10. Presumptive Validity of Commission's Orders

A long line of cases upholds the presumptive validity which attaches to the determination of an administrative tribunal, when the determination is subjected to review by the courts. See Rochester Telephone Corp. v. United States, 307 U. S. 125, 145; Helvering v. Clifford, 309 U. S. 331, 336; Gray v. Powell, 314 U. S. 302, 312; Federal Power Commission v. Hope Natural Gas Co., 320 U. S. 591, 602; Dobson v. Commissioner, 320 U. S. 489. These principles have been affirmed, and again applied to the Interstate Commerce Commission, by the Supreme Court in two very recent cases. Thus, in McLean Trucking Co. v. United States, 321 U. S. 67, 88, Mr. Justice Rutledge said:

> "If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported by evidence, it is not our function to upset its order."

And Mr. Justice Jackson remarked in Hudson and Manhattan Railroad Co. v. United States (decided by the Supreme Court May 29, 1944):

> "It is not for the Court to set aside, without legislative command, its slow-wrought general principles which protect the finality and integrity of decisions of administrative tribunal."

For the reasons assigned, the prayer of the plaintiffs that we set aside the Commission's orders will be denied, judgment will be entered for the defendant, Interstate Commerce Commission, and the action of plaintiffs will be dismissed.

Action dismissed.

[fol. 378] In the District Court of the United States for the Eastern District of Virginia, at Richmond

American Trucking Associations, Inc., et al., Plaintiffs,

vs.

United States of America and Interstate Commerce Commission, Defendants

Dissenting Opinion

Paul, District Judge, dissenting:

I am unable to agree with the conclusions reached by my colleagues in this case. I am of opinion that the contentions of the protestant motor truck operators, in which they are joined by the United States, are well founded in the following respects:

1. That by the refusal of the Commission to hear and consider evidence which the plaintiffs offered and which was pertinent to the questions before the Commission, a full and fair hearing was denied and to that extent the action of the Commission was unreasonable and arbitrary.

2. That the action of the Commission was based upon a mistake as to, or a failure to apply, the proper statutory standards in its determination of "public necessity and convenience".

I

On the first of these questions, the procedure taken in the case is significant. I understand it to have been substantially as follows:

The applications made by the railroad were some fourteen in number each relating to a segment of its existing rail line. No one of the routes applied for extended into more than two states. But many of these segments adjoined and in the aggregate the applications paralleled a large portion of the rail line. References of the several applications were made to joint boards, each of which considered only the route named in the particular application before it and all of which refused to hear evidence touching the effect of the operations made possible through the aggregated applications.

[fol. 379] Upon the reports of the joint boards, the Commission granted the applications, subject to the condition (Condition 3) that shipments transported by the applicant's truck operators should be limited to those moving on a through bill of lading covering a prior or subsequent movement by rail. Upon petition of the railroad the Commission eliminated the condition requiring prior or subsequent rail haul and replaced it with a restriction whereby the motor transportation was limited by certain "key-points" on the railroad line. The railroad then petitioned for certain changes in the key-points as originally prescribed by the Commission. On a hearing on this latter petition all of the applications were consolidated, but the hearing was limited solely to the question of the modification of condition 3. At this hearing the Department of Justice sought to present evidence as to the effect of the railroad's motor truck operations with particular regard to conditions of competition. It later sought to have the case reopened and reheard for the same purpose. Both efforts were ineffectual. It appears that at an earlier stage of the proceedings the protesting motor carriers had sought to have all of the applications consolidated in order that the issue of public convenience and necessity might be considered from the standpoint of the unified route created by the aggregate of the several applications, on which the protestants desired to present testimony. This request for consolidation was refused. The Commission evidently approved each of the different applications on the strength

of the hearings and reports by the joint boards, where, in each instance the joint board had limited its consideration to the terms of the particular application before it and had refused to receive evidence touching the effect of the combined applications.

Whatever purpose the railroad had in putting its plans in the form of fourteen separate applications need not be considered. The fact is that when the various applications were filed, practically simultaneously, it was evident to the Commission that the plan contemplated various motor routes which operating together would cover a continuous [fol. 380] route paralleling a large part of the railroad. By the removal of condition 3, the motor service was opened to traffic having no prior or subsequent rail haul and it was made possible to transport shipments entirely by truck from a point of origin in one route to a destination on the line of a contiguous route. The result, so it seems to me, was to establish a service in direct competition with existing truck routes. The Commission, however, proceeded on a theory that each abbreviated route applied for stood alone and refused to consider evidence showing the relationship between them and the effect of their combined operation. It acted solely upon a theory and ignored the actual facts before it.

It would seem, therefore, that at no stage of this proceeding were the protesting motor carriers permitted to present the testimony which they deemed pertinent and essential on the issue of public convenience and necessity. This testimony bore upon the relationship among the various truncated routes for which the railroad had applied and upon the practical effect of the assembled operation. The Department of Justice was similarly denied an opportunity to present evidence as to the effect of these combined operations in unduly restraining competition. The effect of this latter denial is emphasized by the fact that the effect upon competitive conditions could not possibly be determined except by consideration of the operations as a whole and by the further fact that under the statute (Act of Sept. 16, 1940, 54 Stat. 906; 49 U. S. C. A. (2) (b)) the Commission is required to find that granting of the application will be to the public advantage and will not unduly restrain competition.

It is true that the Commission made a finding of public convenience and necessity, but such a finding is in any case

a conclusion supposedly based upon consideration of existing facts. I am not unmindful of the weight to be given to the findings of the Commission, but this presumes that such findings are the result of a full and fair hearing and consideration of all pertinent evidence offered bearing upon the [fol. 381] issue before the Commission; a hearing at which both sides have an opportunity to be heard. The statement in the majority opinion that the excluded evidence, even if admitted, would probably not have influenced the decision of the Commission, does not satisfy the situation. The protesting parties were entitled to be heard. I am not saying that the Commission reached an erroneous conclusion, nor that if the excluded testimony had been heard a different conclusion would have been reached. Perhaps the finding would have been the same. But in such case it would have been the result of the full and fair hearing which the law contemplates and which, in my opinion, the protestants have never yet had.

II

I am further of opinion that in finding that the public convenience and necessity would be served by approval of these applications, the Commission failed to apply the proper criteria for determination of that question.

Without discussing it in detail it appears to me that the record discloses that consideration of these applications was from the standpoint only of whether the Seaboard would thereby be able to handle its freight traffic in a manner more economical and convenient to it. The applications were made by the railroad in the belief that by the use of a motor truck service it could handle certain classes of traffic with greater convenience and economy and it was upon this basis that the certificates were granted. I do not take it that this satisfies the requirement that it is the public convenience and necessity which must be served.

Congress undoubtedly has recognized the existence of the various modes of transportation and sought to preserve the integrity and the advantages of each, without discriminations, preferences or advantages among them. A railroad has no authority, merely by the fact that it is a common carrier, to modify its method of carriage to that of a car- [fol. 382] rier by motor truck. When it seeks to do so no reason is seen why it is not subject to the same requirements as any other applicant for such privilege. In

such case the test is not whether the railroad can carry on its existing business with greater economy and efficiency by the changed method of operation, but whether there is a public need for the creation of the new service. It is argued by the applicant that the term "public convenience and necessity" is generic, leaving to the Commission the widest latitude for its definition in the unlimited variety of circumstances which it may face. Without disputing this general statement it is evident that the phrase comprehends, not the needs of the applicant, but the needs of the community, the public by whom and to whom freight is shipped, and which presumably is indifferent to the method of transportation so long as it has some method which is as adequate and convenient as any other.

That the Commission did not apply these standards is in effect admitted by it in its brief, where it is argued:

> "The fundamental error into which plaintiffs fall is the assumption that the service proposed by the railroad is a like and competitive service to that presently rendered by the truck operators along the route sought by the railroad, and consequently the application should have been governed by the same criteria as obtain where a new motor carrier seeks to invade a territory already occupied by existing motor carriers. In the latter instance questions of adequacy of existing service, the competitive effect of a new service, estimated traffic, and the ability of the communities served to support the new enterprise are pertinent issues upon which the evidence to be introduced by the plaintiffs might have had bearing. But these applications did not seek to establish a new and like transportation service; they sought merely authority to establish new methods of *operation* to provide a service equivalent to that which the railroad was already under a duty to render."

This is also an admission that the Commission did not consider the adequacy of existing service or the competitive effect of the new service in reaching its conclusions. It seems to me that this is exactly what the Commission should have considered in determining the question of public convenience and necessity.

It is evident that the two matters in which the Commission was in error are interrelated. It failed to apply the proper standards for determining the question of public [fol. 383] convenience and necessity and, therefore, refused to hear testimony bearing upon the standard which it had rejected. These errors were not in findings of fact, which we might properly refrain from reviewing. They were errors in the application of the law which, as I see it, require that the prayer of the complaint be granted. It is possible that upon a hearing applying the proper standards by which these applications should be judged and at which all pertinent evidence is considered the Commission would still be of opinion to approve them. But until this is done the orders granting the certificates should not be allowed to stand.

District Judge.

[fol. 384] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

Civil Action No. 285

AMERICAN TRUCKING ASSOCIATION, INCORPORATED, et al., Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION; and LEGH R. POWELL and HENRY W. ANDERSON, Receivers of the Seaboard Air Line Railway Company, Intervenor, Defendants

JUDGMENT—Filed July 21, 1944

This action having come on for hearing on June 1st, last, before a statutory Court composed of three judges, upon the pleadings filed herein, the arguments of counsel and briefs submitted herein, and the Court having maturely considered the same, and having filed its opinions herein on July 17th, 1944, it is

Ordered, Adjudged and Decreed that the prayer of the plaintiffs herein be, and the same is hereby denied; that the defendant, Interstate Commerce Commission, have

judgment against the plaintiffs, and that the above-styled action be, and the same is hereby, dismissed.

Armistead M. Dobie, United States Circuit Judge;
A. D. Barksdale, United States District Judge.

I dissent to the entry of the foregoing judgment.

John Paul, United States District Judge.

July 21st, 1944.

[File endorsement omitted.]

[fols. 385-386] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed August 18, 1944

To the United States of America, the Interstate Commerce Commission, Legh R. Powell, Jr. and Henry W. Anderson, Receivers of the Seaboard Air Line Railway Company, or Their Counsel:

Please take notice that pursuant to the statutes and rules of Court in such case made and provided, the American Trucking Associations, Inc., Flamingo Truck Lines, Inc., Hunt Truck Lines, Great Southern Trucking Co., Central Truck Lines, Inc., K. & L. Transportation Company, Inc., and St. Johns River Line Company, plaintiffs in the above-entitled cause, have appealed and do hereby appeal to the Supreme Court of the United States, from the final decree of the above-entitled Court made herein and entered on the 21st day of July, 1944, and from each and every part thereof.

Dated August 12, 1944.

J. Ninian Beall, Roland Rice, Samuel W. Shelton,
Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 387] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed August 18, 1944

The American Trucking Associations, Inc., Flamingo Truck Lines, Inc., Hunt Truck Lines, Great Southern Trucking Co., Central Truck Lines, Inc., K. & L. Transportation Company, Inc., and St. Johns River Line Company, being aggrieved by the final order or decree of the above-entitled Court hereinbefore made and entered on the 21st day of July, 1944, in the above-entitled cause, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in the Assignment of Errors filed herewith and to which reference is hereby made.

They pray that citation be issued as provided by law and that a transcript of the record, proceedings, and documents on which the final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Dated August 16, 1944.

J. Ninian Beall, Investment Building, Washington, D. C.; Samuel W. Shelton, Tenth Street Building, Richmond, Va., Attorneys for Appellants.

Roland Rice, 1424 16th Street, N. W., Washington, D. C.; Brashears, Beall & Beasley, Investment Building, Washington, D. C., Of Counsel.

[File endorsement omitted.]

[fols. 388-389] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 18, 1944

The plaintiffs in the above-entitled case, having prayed for the allowance of an appeal in the above-entitled cause to the Supreme Court of the United States from the decree made and entered in the above-entitled cause by the above-entitled Court, on the 21st day of July, 1944, and from each

and every part thereof, and having presented and filed their Assignment of Errors and statement as to jurisdiction, pursuant to the statutes and rules of Court in such case made and provided:

It Is Ordered and Decreed that the appeal be, and the same is hereby allowed as prayed, and made returnable within forty (40) days from the date thereof, and the Clerk is directed to transmit to the Supreme Court of the United States a proper authenticated transcript of record, proceedings, and papers on which the decree was made and entered.

And It Is Further Ordered that security for costs on appeal be fixed in the sum of Five hundred Dollars, ($500).

Dated August 18, 1944.

Armistead M. Dobie, United States Circuit Judge.

[File endorsement omitted.]

[fol. 390] In United States District Court

[Title omitted]

Order Allowing Enlargement of Time to Submit Stipulation with Respect to Portion of Record Before the Interstate Commerce Commission to Be Used on Appeal —Filed August 18, 1944.

Good cause appearing therefor, it is hereby ordered that the Petitioners in the above-entitled suit may have, and they are hereby allowed, to and including September 15, 1944, within which to prepare and lodge in the Clerk's office of this Court a statement of the evidence and file with said Clerk a praecipe in accordance with Equity Rule 75 upon appeal from the decree of the above-named Court made and entered herein on the 21st day of July, 1944, and to docket the said appeal and file the record therein with the Clerk of the Supreme Court of the United States.

Dated August 18, 1944.

Armistead M. Dobie, United States Circuit Judge.

[File endorsement omitted.]

[fol. 391] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed August 18, 1944

Come now the American Trucking Associations, Inc., and, in connection with their petition for appeal, submit the following Assignment of Errors committed by the majority of the learned District Court of the United States for the Eastern District of Virginia, in the course of the proceedings and in and by the decision filed July 17, 1944, and the terms of final decree passed and entered on the 21st day of July, 1944, in the above-entitled cause:

1. The said District Court erred in that it decreed the petition of petitioners, American Trucking Associations, Inc., et al., to be denied and dismissed and that the Interstate Commerce Commission have judgment against the plaintiff, notwithstanding that as specifically averred in said complaint, and firmly established by the proof, the orders of the Interstate Commerce Commission, as set forth in Paragraph 4 of the complaint and the exhibits therein referred to, then and now complained of were and are illegal and should be held to be void, because: The said Commission misconceived its statutory duty in that:

(a) The reports and orders of the Commission conclusively show that contrary to law, the Commission issued motor carrier certificates to the Seaboard Railway on the assumption that it had statutory authority and jurisdiction to recognize and certificate a hybrid type of carrier consisting of a combination of rail and motor service.

[fol. 392] (b) The reports and orders of the Commission show that it regarded the applications for certificates of convenience and necessity to conduct hybrid operations (part rail and part motor) as being matters not controlled by the usual legal criteria for public convenience and necessity under Sections 206(b) and 207 of Part II, and the Commission further concluded, contrary to law, that such operations could be exempted from other provisions of Part II, i. e., Section 216, covering tariffs, and Section 220,

covering accounting, and accordingly so exempted such operations.

(c) The reports and orders of the Commission show that, contrary to law, the Commission failed and refused to provide nondiscriminatory provisions in certificates (Sec. 208) and to give force and effect to the provisions of the National Transportation Policy, with particular reference to the requirements for fair and impartial regulation of, and the preservation of the inherent advantages of, each type of transportation committed to its jurisdiction.

2. The said District Court erred in holding that the Commission had received evidence and applied proper legal criteria in determining public convenience and necessity under Section 206(b), in that:

(a) The reports and orders of the Commission conclusively show, and the Commission on brief admitted, that it did not apply in these railroad cases the normal criteria which it had applied in other motor carrier cases where independent motor carriers were applicants, but applied a different "policy" of its own determination where railroads and railroad owned motor carriers are applicants for motor carrier rights.

(b) The reports and orders of the Commission show that normal criteria for the determination of public convenience and necessity was either disregarded, or subordinated to the point of exclusion, and that the Commission substituted in lieu thereof, a policy based on determination of railroad convenience.

(c) The reports and orders of the Commission show that the Commission deemed it immaterial and therefore disregarded the willingness and ability of the independent motor carriers to furnish adequate service in the territories covered by railroad applications and to coordinate their services with those of railroads, whereas, the Court found that the Commission did consider the service ren- [fol. 393] dered by independent motor carriers in connection with its determination of public convenience and necessity.

(d) The Commission denied appellants a fair and reasonable hearing in that it failed and refused to receive

and consider evidence pertinent to the issue of public convenience and necessity and denied itself a record from which the required statutory findings might be made.

(e) The said District Court misconceived the distinction between railroad applications under the "grandfather" clause of Sections 206(a) and the proof there required, being proof of past services only, as opposed to applications under Sections 206(b) and 207 of Part II, requiring proof of present and future public convenience and necessity.

3. The said District Court erred in concluding that the Commission had given proper consideration to and made the requisite statutory findings in connection with restraint of competition under Section 5 of Part I, in that:

(a) The Court misconceived the issue presented and assumed that plaintiffs were directly seeking to have the Commission administer the Anti-Trust Laws, whereas, the complaint (Paragraph 5(b)) specifically put in issue the statutory findings required by old Section 213(a)(1) of the Motor Carrier Act (Part II of the Interstate Commerce Act) and New Section 5(a)(b) of Part I of the Interstate Commerce Act, and in connection therewith:

(b) In denying plaintiffs' contentions that the Commission had refused to receive evidence and failed to make the required statutory findings, the Court quoted several conclusions, from the reports of the Commission, in support of the view taken by the Court, and seemingly overlooked the fact that the cited conclusions of the Commission are among the conclusions which plaintiffs charged were unsupported by the evidence.

(c) The Court found, "there is ample evidence to support these findings", however, plaintiffs contended that there was no evidence to support the conclusions of the Commission and the Court did not refer to any evidence in support of the conclusions of either the Commission or the Court, nor was there any evidence from which the Court or the Commission might have reached their respective conclusions.

[fol. 394] 4. The said District Court erred with respect to the provisions of Section 205(a) of Part II, as follows:

(a) In holding that the Commission had power and jurisdiction to assign the several applications, filed by the receivers of the Seaboard Air Line Railway Company, for separate hearings before several separate Joint Boards.

(b) In holding that the assignment of such separate applications for separate hearing before separate Joint Boards was a well established administrative practice.

(c) In holding that plaintiffs' timely and repeated objections and exceptions to the separate Joint Board proceedings were addressed to the sound discretion of the Commission as opposed to plaintiffs' contentions that said exceptions were grounded on mandatory statutory requirements.

5. The said District Court erred in holding that the Commission had accorded plaintiffs full, fair and reasonable hearings under Secs. 205(a)(e), 206, and 207 of Part II and Sec. 217 of Part I, and that plaintiffs were not injured by the exclusion of evidence, in that:

(a) The said District Court was inconsistent and in error in finding that "much of it (excluded evidence) might have been relevant had the Commission consolidated the application", and then concluding that plaintiffs had been accorded full, fair and reasonable hearings, despite the fact that the Court also found that the Commission failed and refused to either consolidate the hearings or receive the evidence.

(b) The said District Court was inconsistent and in error in finding, on the one hand, that "each Joint Board was necessarily limited to deciding upon, and only upon, the particular application, or applications, before that Board", and then, on the other hand, concluding that the Commission, by giving consideration to an aggregate of records of hearings, which were individually deficient, thereby cured the errors which were inherent in the individual records.

(c) The said District Court was inconsistent and in error in finding, "Then, too, it is open to very serious question whether this excluded evidence would have, if admitted,

influenced the decisions of the Commission", and then pro-
[fol. 395] ceeding, as the Court did, to resolve this "serious question" in favor of the Commission and against these plaintiffs.

6. The said District Court erred in assuming that the doctrine with respect to the "presumptive validity which attaches to the determination of an administrative tribunal", is applicable in this case, in that:

(a) The decisions dealing with the issue are not dogmatic in the sense that they may be lifted from their factual setting and transplanted.

(b) The issues involving error on the part of the Commission which were presented to the Court, involved errors of law, in connection with statutory construction, as distinguished from matters of discretion which are committed to administrative determination or expert judgment.

(c) The challenged course of procedure and policy, as now applied by the Commission was placed in issue before the Court, promptly upon the conclusion and exhaustion of administrative remedies.

(d) The Court found, with respect to the Commission's policy in connection with railroad applicants, "this appears to have been a well settled policy of the Commission", whereas the "policy" was one of the precise issues presented to the Court for review and therefore may not be, in and of itself, cited as justification or authority.

7. The said District Court erred in suggesting that plaintiffs questioned the administrative integrity of the Commission, in that:

(a) The abbreviated quotations cited in the opinion of the Court were lifted from their context in the brief and in the form presented, and in a setting of omissions, are misleading.

(b) The brief referred to contained and prominently presented clear and unequivocal expressions of plaintiffs "*respect*", and "*esteem*" for the Commission and that any terms used in the brief, were "*confined to their legal concept*".

(c) Those assurances were, in substance, repeated on oral argument and laid a premise widely at variance from inferences which might be drawn from the quotations contained in the opinion.

[fol. 396-407] (d) The conclusions were based on substantial matters of record and were therefore fair legal comment.

Dated August 15, 1944.

J. Ninian Beall, Investment Building, Washington, D. C.; Roland Rice, 1424 16th Street, N. W., Washington, D. C.; Samuel W. Shelton, Tenth Street Building, Richmond, Va., Attorneys for Plaintiffs.

Brashears, Beall & Beasley, Investment Building, Washington, D. C., Of Counsel.

[fol. 408-409] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

AMERICAN TRUCKING ASSOCIATIONS, INC., et al., Plaintiffs,

vs.

UNITED STATES and INTERSTATE COMMERCE COMMISSION, Defendants

Civil Action No. 285

BRIEF FOR PLAINTIFFS

"6

"We believe that the Commission has grossly exceeded statutory bounds and disregarded the will of Congress.

"We undertake the burden of proving our case along these lines.

"Before proceeding further, we disclaim any intention or purpose to charge any person connected with either the Interstate Commerce Commission or the intervenor, Seaboard Air Line Railway, with any improper personal conduct. We have the greatest respect for all parties concerned and involved. The use of such sharp and pointed

terms as 'arbitrary and capricious,' 'railroad mindedness,' 'fraud,' and wilful' is confined to their legal concept.

"Within those sincere expressions of personal esteem, we present our argument."

[fol. 410] Citation in usual form, filed August 19, 1944, omitted in printing.

[fol. 411] In United States District Court

Brief for Interstate Commerce Commission, Pages 28-34

"28

"III

"The Commission Having Determined That the Several Applications Did Not Contemplate a Single Integrated Motor Truck Service, Its Rejection of Plaintiff's Motion to Consolidate and of Its Proffered Evidence Was Not Error

"The complaint charges the Commission with error in its refusal to permit the protestants and intervenors to introduce evidence or require applicant to produce evidence with respect to enumerated items set out on pages 16 and 17 of the complaint. As a result of this action, it is claimed, the Commission acted without substantial evidence and was disabled from making necessary finding required by the statute.

"The fundamental error into which plaintiffs fall is the assumption that the service proposed by the railroad is a like and competitive service to that presently rendered by the truck operators along the route sought by the railroad, and consequently the application should have been governed by the same criteria as obtain where a new motor carrier seeks to invade a territory already occupied by existing motor carriers. In the latter instance questions of adequacy of existing service the competitive effect of a new service, estimated traffic, and the ability of the communities served to support the new enterprise are pertinent issues upon which the evidence to be introduced by the plaintiffs might have had bearing. But these applications did not seek to establish a new and like transportation serv-

ice; they sought merely authority to establish new methods of *operation* to provide a service equivalent to that which the railroad was already under a duty to render. The several applications state (Appendix to complaint, p. 6):

> [fol. 412] " 'The rail lines in territory sought to be served are the only transportation facility which can render a coordinated rail and highway service as proposed between points located on the railroads involved. Such motor carrier service, as authorized, will (a) expedite the movement of freight, and (b) reduce the cost of rail operation to the extent that it is now necessary to operate train for the handling of small quantities of less-than-carload freight.'

"The record taken at the several hearings showed that the proposed service had for its objective the improvement in the handling of less-than-carload freight moving largely between small stations intermediate to important terminals and necessarily carried in local trains. The Commission found (17 M. C. C. 413, 417-418):

> " 'The proposed routes parallel the lines of the railway, and applicants propose to substitute truck service for the existing less-than-carload freight service of the railway between stations on its lines . . .'
>
> " 'The proposed schedules are to be so coordinated with applicants' regular train service from important origins as to expedite delivery by as much as 36 hours in some instances. The bulk of the less-than-carload movement is to and from small points intermediate to larger terminals and is now carried in local trains. . . .'
>
> " 'Applicants expect to continue to utilize rail transportation for most of the line-haul between the points served by them, but less-than-carload shipments are to be transferred to trucks at stations near the final destination of the shipments. By relieving local trains from the handling of such shipments except to and from points where cars are set out, applicants expect to expedite local train schedules and speed up the handling of carload traffic. . . .'

"In approving the applications the Commission recognized a peculiar type of service sought to be performed, a service having neither the characteristics of rail service

alone nor of motor vehicle service alone. Accordingly, it premised its ultimate conclusion upon factors of public convenience and necessity which it found to justify its approval of the applications. Particularly did it find that the question of competition with local truckers was not a substantial issue when it stated (p. 432):

> "'There seems little question as to the proposed rail-truck coordinated service being in the public interest, nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers. However, the only need shown of record is for service [fol. 413] which is strictly supplemental of, or auxiliary to, and coordinated with applicants' rail service, and the certificate granted herein will be limited accordingly.'

"From this aspect of the scope of the applications there is no merit to the contention that the finding of public convenience and necessity was only possible because the Commission denied a consolidated hearing and refused to hear evidence which protestant sought to incorporate in the record. Such evidence was pertinent to a situation which was not present in these cases.

"The Commission's report in 28 M. C. C. 5 was predicated upon the special type of service that was proposed and that the test of public convenience and necessity in such case was not to be met by a showing that there was not adequate independent motor carrier service between all stations. Thus the report states (p. 10):

> "'* * * The thought of Division 5 in regard to this matter was that public convenience and necessity required a coordinated rail-and-truck service, which, upon the records of the cases before it, could only be furnished efficiently and effectively by conducting the two forms of transportation under a single control, but that there was adequate independent motor-carrier service between all stations, generally speaking, so that public convenience and necessity did not require the institution between the stations of new motor carrier service under railroad control which is not coordinated with prior or subsequent rail service.'

"Under these circumstances the Commission found that public convenience and necessity lay in the reduction in cost and increase in efficiency of transportation service This is not, as plaintiffs claim, a consideration of railroad convenience and necessity since these results inure to the benefit of the general public.' '

[fols. 414-426] "Prior to the enactment of the Motor Carrier Act, 1935, the Commission described this type of motor carriers operations in *Coordination of Motor Transportation*, 182 I. C. C. 263, 336, as follows:

> "'(a) *Substitution of trucks for way trains and terminal switching.*—It is generally recognized that peddler or way-freight operations, as to many points, consume much more time than do trucking movements and that they are costly because of the number of transfers required and the light loading of cars. In many instances the roundabout character of railroad lines adds to the difficulty. With increased highway competition, these drawbacks have become more and more serious. For several years, therefore, a number of railroads have been substituting truck for rail movements of less-than-carload traffic from designated transfer points including some points specifically set up for the purpose of concentrating freight by rail for truck delivery to outlying stations. In the reverse direction the trucks collect freight for concentration at such transfer points. The distances covered are commonly 15 to 20 miles in

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' ' ' ' ' ' ' The term "public interest" as thus used (Transportation Act, 1920) is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the power conferred.' *New York Central Securities Co. v. U. S.*, 287 U. S. 12, 25. 'It is a primary aim of that policy (embodied in the Transportation Act, 1920, and the Emergency Railway Transportation Act, 1933) to secure the avoidance of waste. That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public.' *Texas v. United States*, 292 U. S. 522, 530.

either direction from the concentrating point. Regular rail rates apply and store-door service is not furnished, but frequently the substitution of truck for rail movement is not shown in the tariff. The time of way-freight trains, which commonly carry a crew of five or six men, is thereby considerably reduced or the length of runs increased, deliveries are frequently made one to two days earlier, a more flexible service is made available, and the number of lightly loaded cars is reduced. By taking care of traffic requiring expedited movement, it it further possible in some cases to reduce train service on unimportant lines from a daily basis to a 2-day basis, and in other cases, by eliminating less-than-carload movements, through trains have been able to take over the carload movement of way trains, eliminating the latter. The requirements of carload traffic and the divergence of highways from the routes of rail lines render it impossible to abandon all local freight-train service.' "

[fol. 427] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF LEGH R. POWELL, JR., AND HENRY W. ANDERSON, RECEIVERS OF THE PROPERTIES OF SEABOARD AIR LINE RAILWAY COMPANY, INTERVENING DEFENDANTS, FOR ENLARGEMENT OF TIME FOR FILING DESIGNATION OF ADDITIONAL PARTS OF THE RECORD—Filed August 22, 1944.

Come now Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants, and pursuant to paragraph 2 of Rule 10 of the Rules of the Supreme Court move the Court to extend to September 25, 1944, the time for filing a designation of additional portions of the record to be transmitted to the Supreme Court on the appeal of this cause. In support of their motion they show to the Court;

1. That the Appellants have filed a designation of the parts of the record to be included in the transcript to be

transmitted to the Supreme Court subject to an extension of time, granted by the Court, to September 15, 1944, within which to prepare and lodge in the Clerk's Office of this Court a statement of the evidence and a praecipe in accordance with Equity Rule 75.

2. That the Intervening Defendants have concurrently herewith filed a motion that this Court direct the Clerk to omit from the record so to be transmitted certain matters included in said designation by Appellants.

3. That Counsel for the Intervening Defendants have been advised by Counsel for Appellants that he will desire a hearing on said motion.

[fols. 428-430] 4. That until these matters are disposed of Intervening Defendants will not be definitely informed as to the portions of the record which will be designated by Appellants for inclusion in the transcript on appeal and will accordingly be unable to determine what additional portions of the record they will desire to be included in the transcript.

Respectfully submitted, W. R. C. Cocke, Thomas L. Preston, Chas. F. Abels, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants.

[fols. 431-434] In United States District Court

[Title omitted]

Order Enlarging the Time for Filing Designation of Additional Portions of the Record by Intervening Defendants—Filed August 22, 1944.

Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants, having moved for an enlargement of the time for designating additional portions of the record to be transmitted to the Supreme Court on the appeal of this cause, and good cause therefor appearing, it is hereby

Ordered that the time within which said Intervening Defendants may file a designation of additional portions of the record to be included in the transcript to be transmitted to

the Supreme Court is extended to and including September 25, 1944.

Dated August 22, 1944.

Armistead M. Dobie, United States Circuit Judge.

[File endorsement omitted.]

[fol. 435] Citation in usual form showing service on W. P. Bartel, et al., filed August 29, 1944.

[fol. 436] IN UNITED STATES DISTRICT COURT

CLERK'S MEMORANDUM

APPEAL BOND—Filed September 15, 1944

Dated: September 11th, 1944.

Penalty: Five Hundred Dollars ($500.00).

Obligors: American Trucking Associations, Inc., et al., as principals, and Eagle Indemnity Company, of New York, N. Y., as Surety.

Conditioned to pay all costs, or such costs as the appellate Court may award.

[fol. 437] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE DESIGNATING ADDITIONAL PARTS OF THE RECORD TO BE INCORPORATED IN THE TRANSCRIPT—Filed Sept. 19, 1944

To the Clerk of the above named court:

You are hereby requested to include in the transcript to be transmitted to the Supreme Court of the United States on the appeal of this cause, in addition to the portions of the record designated by Appellants, the following:

1. Appellants' Designation of Record.

2. Order of the Court dated August 22, 1944, enlarging the time for filing a designation of additional parts of the record by Intervening Defendants.

3. Testimony of R. W. Rogers beginning on page 19 and ending on page 35 of the transcript of the proceedings before the Court on June 1, 1944.

4. The following portions of the Brief for Plaintiffs, dated at Washington, D. C., May 22, 1944, relevant to Assignment of Error No. 7 and Items 18 and 19 of Appellants' designation:

(a) From and including the heading on page 12 to the bottom of page 14, reading as follows:

"Fictions Indulged in

"In an effort to bolster its weak legal position, the Com-[fol. 438] mission has indulged in a number of sheer fictions.

"Realizing that there was no proof of public convenience and necessity in the ordinary sense to support more motor carrier operations, the Commission asserts that the service authorized is 'something new'—'something different'—'a service different from either rail or motor carrier'—etc., etc. Presumably, the theory which motivated the Commission in seeking refuge in this 'new' service is grounded in the knowledge that there already exists an abundance of motor carrier service, rail service, express service and forwarder service, and by no stretch of the imagination could convenience be established for any more of either one of those services. To escape this dilemma, they invented the doctrine of 'new service.'

"This new service involves the use of motor vehicles and motor carrier certificates of convenience and necessity. Certificates for this new service are not issued on a showing of public convenience and necessity, but are issued on a showing of railroad convenience and alleged improvement to railroad service. The operations are to be conducted by motor vehicles with railroad tariffs. No separate accounting for either expenses or revenue are involved. That is all to be scrambled with the railroad operations. The service is not to be based on cost of rendering motor carrier service, but is to be based on alleged savings in railroad operations. There is to be no means of testing the reasonableness of the rates or the reasonableness of the competitive practices, because there will be nothing to compare them with.

"It is new and different beyond a doubt. It is so new and so different, so novel and so revolutionary, that the Commission didn't tell Congress about it. Congress made no provision in either the Rail Act or the Motor Carrier Act, or any other act, for this hybrid monstrosity, which is exclusively the brain child of the Interstate Commerce Commission.

"The next fiction indulged in, is that this new hybrid operation will not represent new competition, because it will only serve points already served by the railroads. Truly, the Commission's generosity to the railroads knows no bounds. Between ninety and ninety-five percent of the population of the United States have some kind of railroad service. That much of the business in the United States is set aside by the Commission as 'belonging' to the railroads, and presumably the balance, wherever they may find it, belongs to the trucks and the water carriers. Then the Commission says that these points served by the railroads have always been served by the railroads, and that the railroads are under an obligation to continue serving such points. Therefore, all of that traffic is railroad traffic, and, if the railroads keep it, get it, or recapture it, that is not competitive, because it was already railroad traffic.

"The Commission proceeds on the theory that the ten to twenty percent of the national ton miles of the total traffic which the trucks are handling must have been stolen from the railroads, because it originated at points served by the railroads. Therefore, it is perfectly proper for the Commission to issue the railroads any kind of a certificate, so long as it enables the railroads to get all of the traffic at all of the points served by all railroads, regardless of the fact that such a theory means the annihilation of the motor carrier industry. That would have been the kind of a law which the Commission would have liked to see Congress [fol. 439] enact, but Congress rejected that theory, and directed the Commission to regulate the motor carrier industry as a separate and distinct transportation agency.

"The Commission thinks it knows more about what is good for the country than Congress does. Therefore, the Commission has determined to handle the matter according to its own notions. This is the setting in which the Commission regulates the motor carrier industry and grants certificates of convenience and necessity for motor

carrier rights to railroads. Therein lies the reason for the failure of the Commission to adopt proper legal criteria in passing on issues involving public convenience and necessity when railroads apply for motor carrier rights. The Commission has not exercised its administrative discretion within the frame work of the law which it administers. That is why these plaintiffs are seeking the aid of the Court to set the Commission's orders aside."

(b) The first paragraph beginning on page 18 and the first sentence of the second paragraph beginning on that page, reading as follows:

"Here, plaintiffs contend that the Commission not only failed and refused to make the basic or essential findings required to support its order, but also failed and refused to conduct a proper hearing and failed and refused to hear and receive evidence essential to the making of proper findings. The Commission, in these cases, has now gone so far as to substitute its predetermined conclusions for the requirements for a legal hearing.

"The Commission having decided to 'legislate' in derogation of the will of Congress, it now goes through the fiction of a hearing and refuses to hear evidence."

(c) The first paragraph beginning on page 19, reading as follows:

"The hearings which the Commission now holds on any railroad application for motor carrier rights are a farce. The matter has reached the point where no possible evidence could serve to show adequate existing services. No possible evidence could serve to overcome railroad desire and railroad convenience. That is not the law!"

(d) The last sentence on page 19, reading as follows:

"The 'hearings' are in effect; ex parte."

(e) The first paragraph beginning on page 68 and the first sentence of the next succeeding paragraph, reading as follows:

"The pretensions that certificates were issued for the purpose of improved railroad service has been unmasked. The Commission issues motor carrier certificates to railroads because railroads ask for them, and does so in total

disregard of the issues of public convenience and necessity. *Is it not now clear why these plaintiffs are in Court?*

[fol. 440] "The next pretense to be unmasked is that of imposing conditions to prevent the railroads from monopolizing motor carrier transportation."

(f) The carry-over paragraph beginning on page 73 and ending on page 74, reading as follows:

"The foregoing case is an excellent example of the singlemindedness with which the Commission disposes of these issues. Of course the Commission was 'whistling in the dark' and endeavoring to bolster a bad position when it said that the railroad was already handling the traffic in question. If they are already handling the traffic, the public must be satisfied. After the Commission abolished the requirement for prior or subsequent movement by rail there could be no such thing as purely railroad traffic. Traffic that moves by truck is truck traffic and if it is not moved by railroad at all, it cannot possibly be railroad traffic. There appears to be no limit to what the Commission will say and do in order to bolster these illegal orders."

(g) Paragraph 5, on page 103, reading as follows:

"5. That in applications by railroads the Commission has established a preconceived policy of issuing certificates to railroads regardless of the facts and has made a farce of the so-called hearings on convenience and necessity."

(h) The first four sentences on page 105, reading as follows:

"The Commission had evidently concluded that no matter how weak the railroad's showing might be or how strong a showing the independent motor carriers might make, such evidence could have no influence on the Commission's decision. They have determined to give railroads certificates for the asking. The law contemplates a hearing and proof.

"As far as the Commission is concerned, all of the proceedings might just as well have been *ex parte* and disposed of by the mere filing of the applications by the railroads."

(i) The second full paragraph on page 108, reading as follows:

"The Commission cannot perform its statutory duty by shutting its eyes. The Commission must hear and consider all of the evidence. The Commission has not conducted a fair, reasonable and statutory hearing and it deliberately employed the device of piece-meal hearings which denied protestants a reasonable hearing."

(j) The carry-over paragraph beginning on page 119 and ending on page 120, reading as follows:

"We suggest that it is clear that this railroad applicant, deliberately sought to evade the requirements for a hearing in which all of the related evidence could be introduced. [fol. 441] The device invented for the purpose of accomplishing that purpose, was to split its application of February 23, 1937 into a large number of subs. Had the Commission been interested in following statutory requirements and in conducting a fair hearing it could not have been so naive as to be fooled by such a patent fraud."

(k) The second and third full paragraphs on page 126, reading as follows:

"The Commission now determines that no evidence can possibly defeat a railroad applicant for motor carrier service.

"In a legal sense, hearings have been abolished and certificates are issued to railroads as a matter of right."

(l) The last paragraph on page 134, reading as follows:

"The Commission appears to regard itself as something separate and apart from the will of Congress, either with respect to the national transportation policy, the Antitrust Laws, or the opinions of the Courts. We suggest it is high time that the Commission be reminded of the fact that they are nothing but an administrative agency existing for the sole purpose of carrying out the intent of Congress. The Commission should now be impressed with the proposition that the Courts will strike down their high-handed usurpation of authority."

(m) The first paragraph following the heading on page 141, reading as follows:

"The railroad mindedness of the Commission and its utter contempt for the will of Congress has had its repercussions in the Congressional debates."

(n) The last full paragraph on page 146, reading as follows:

"We are on sound ground when we charge the Interstate Commerce Commission with willful disregard of its statutory duties and the intent of Congress."

(o) The second and third full paragraphs on page 173, reading as follows:

"The railroad program seems to have the blessings of the Commission. The Commission simply has long had a preconceived notion that there should be a transportation monopoly, built around the railroads. It has been unable to reconcile itself to the proposition that Congress repudiated its views on that subject. The Commission has set itself up as a supermaker of transportation policy which it conceives to be superior to that which Congress fashioned.

"The Commission hopes for immunity in its self-appointed role by screaming to the Courts that any 'review' would be an intrusion on its 'administrative prerogatives.'"

[fols. 442-443] 5. A copy of the majority and dissenting opinions filed in this cause on July 17, 1944, appellants having failed to append to their Statement as to Jurisdiction a copy of said opinions as required by Rule 12 of the Rules of the Supreme Court.

6. This praecipe, and proof of service.

W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants.

[fols. 444-445] In United States District Court

[Title omitted]

Order Extending Time—Filed Sept. 25, 1944

For reasons appearing sufficient to the court,

It is Ordered that the time within which the record in this case may be prepared and filed in the Supreme Court of the United States is hereby extended for a period of ten days from and after September 27, 1944.

John Paul, United States District Judge, Sitting by Designation.

[File endorsement omitted.]

[fols. 446-449] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 450] Before the Interstate Commerce Commission

Docket No. MC 86687
Sub. No. 3

Application of Legh R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway.

Columbia, South Carolina, June 11, 1937. 9 A. M.

Before: Joint Board No. 2 (J. C. Darby, South Carolina Public Service Commission, Chairman; R. O. Self, North Carolina Utilities Commission).

Also Present: Examiner W. W. McCaslin.

Met pursuant to notice.

Appearances:

Chas. T. Abeles, 319 Seaboard Air Line Railway Building, Norfolk, Virginia, appearing for Applicants.

Edgar Watkins, Jr., Bona Allen Building, Atlanta, Georgia, appearing for Southern Motor Carriers' Rate Conference, Intervener.

Wm. T. Callahan, 31 Hasell Street, Columbia, South Carolina, appearing for Brotherhood of Railroad Trainmen.

[fols. 451-452] Proceedings

Chairman Darby: The Interstate Commerce Commission has set for hearing at this time and place the application of the Receivers of Seaboard Air Line Railway for a certificate of public convenience and necessity authorizing a new operation as a common carrier of commodities generally, by motor vehicle, in the transportation of commodities generally, in interstate commerce, between Hamlet, North Carolina, and Columbia, South Carolina. This hearing is set and will be heard by Joint Board No. 2. The docket number of the proceeding is MC 86687, Sub. No. 3.

I should announce at this time that no free copies of the transcript will be distributed. Any persons desiring copies should order them from the reporter.

All persons who appear to participate in cross-examination, oral argument, or any other active participation in the case must be either such persons as have applied for admission to practice before the Commission, individuals representing themselves, or officers or employees of firms or corporations which they represent.

It is necessary, also, that all interveners file a formal petition for leave to intervene. If they have not done so, they may state orally on the record their interest in the proceedings and their position on intervention and within ten days of the close of the hearing must furnish the Com-[fol. 453] mission with the requisite number of copies of a formal petition of intervention and serve the parties, as required by the rules of the Commission.

Who appears for the applicants in this case?

Mr. Abeles: Charles T. Abeles for the applicants.

The Chairman: Are there any interveners or protestants?

Mr. Watkins: If it please the Court, Edgar Watkins, Jr., appears on behalf of the Southern Motor Carriers' Rate Conference.

The Chairman: Will you state your position, please.

Mr. Watkins: The Southern Motor Carriers' Rate Conference is an organization composed of over four hundred motor carriers operating in Southern territory, many of which are operating along the highways covered in this application and other applications filed by the same applicants. It is our position that the application should be denied, as the present existing service by motor carrier is sufficient to serve the public.

Mr. Abeles: May I ask at this point whether you propose at the time of the presentation of your testimony, Mr. Watkins, if any, to show the carriers, specifically, who are interested in and are opposing this particular application?

Mr. Watkins: I hope to be able to show definitely the operations of the carriers which this application would parallel.

[fol. 454] Mr. Abeles: And I presume that your opposition would be confined to those carriers?

Mr. Watkins: No, sir. The opposition is by the entire Conference.

Mr. Abeles: I presume, then, at the proper time you will show the interest of your Conference as such and the position that it takes?

Mr. Watkins: I think I have stated that very definitely.

Mr. Abeles: I do not think so.

The Chairman: Are there any other interveners or protestants?

Have all the persons appearing as counsel either been admitted to practice or applied for admission to practice before the Commission?

Mr. Abeles: I have.

Mr. Watkins: I have.

The Chairman: The applicants may proceed.

Mr. Abeles: I call Mr. Rogers.

R. W. Rogers was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Rogers, will you state your name, residence, and occupation?

A. R. W. Rogers; residence, Hamlet, North Carolina; superintendent of the North Carolina Division of the Sea-[fol. 455] board Air Line Railway.

Q. Mr. Rogers, you have jurisdiction, in the discharge of your duties, over the territory covered by the application in this proceeding—that is, between Hamlet and Columbia, have you not?

A. That is correct.

Q. How long have you been superintendent over this territory?

A. Over this particular territory since September 10, 1934.

Q. And you are thoroughly familiar, are you not, with the transportation conditions affecting the railway in that territory?

A. I am.

Q. Will you describe now, Mr. Rogers, the nature of the operation for which we are here seeking authority.

A. This is a truck service, depot to depot only, on the line from Columbia to Hamlet, North Carolina, and between Cheraw and Chesterfield, following the C. & L.——

Q. Give the name of that line.

A. Chesterfield & Lancaster Railway. And the C., M. & C.—Charlotte, Monroe & Columbia, from McBee to Jefferson.

Q. The Charlotte, Monroe & Columbia and the Chesterfield & Lancaster are wholly owned subsidiaries of the Seaboard, are they not?

A. That is correct.

[fol. 456] Q. You stated, I believe, that our proposal involves the rendering of truck service only between stations served by the railway, did you not?

A. That is true; depot-to-depot movement only.

Q. Do we propose to carry the traffic on trucks on railway bills of lading?

A. Absolutely.

Q. Only traffic, then, which is offered to the railway, either originating at or destined to railway stations reached by the proposed truck service?

A. That is correct.

Q. Will you explain our purpose in seeking to establish this truck service?

A. One thing is to expedite the movement of my trains. We have trains 93 and 94, at the present time, doing both the through work and this merchandise or LCL work.

Q. I think at this point you had better state the direction and schedule of those two trains.

A. Train 93, scheduled through train to leave Hamlet, North Carolina, at 6:30 p. m., to arrive at Columbia at 11:35 p. m. Train 94, a northward train, to leave Columbia at 7:00 p. m. and arrive at Hamlet at 10:10 p. m. Those trains at the present time perform all of the freight service between Hamlet and Columbia, excepting switcher service that we operate daily between Hamlet and Cheraw.

Now, the LCL business that those through trains are han-
[fol. 457] dling for the intermediate stations slows up the movement of those through trains until we are unable to reach either Hamlet, on the northward trip, or Columbia, on the southward trip, on anything like schedule time.

Q. To what extent does the necessity of performing this intermediate local service delay the movement of those two trains?

A. During the busiest seasons of the year (that is, the fall, winter, and spring) it sometimes happens that we are unable to make our merchandising delivery at Columbia until ten or eleven o'clock in the morning.

Q. That is on the southbound train?

A. Yes, sir. On the northward trip it is not a question of making early delivery of the merchandise; it is a question of getting to Hamlet to connect with our through perishable trains.

Q. You mean that is the importance of arriving at Hamlet?

A. Yes, sir.

Q. Then, I take it, this local train No. 94 carries perishables during the season?

A. During the season, particularly during the vegetable seasons south of Columbia.

Q. And it is important, for the prompt delivery of these perishables, that they make connections with the train—
[fol. 458] mention the number of the train.

A. Train No. 80, at Hamlet.

Q. To make deliveries beyond Hamlet—is that correct?

A. That is correct. Of course, if that train is missed, under the regulation of our traffic that traffic arbitrarily sustains a delay of twenty-four hours.

Q. That delay is of some importance, I take it, in the movement of perishables?

A. Oh, yes.

Q. To what points do those perishables move, generally speaking?

A. Generally on Potomac Yards, Washington, and beyond—largely New York, Buffalo, and those points.

Q. Largely the Eastern and Middle Western markets?

A. That is correct.

Q. Where do those perishables originate?

A. Originate in South Carolina, on the line between Columbia and Savannah.

Q. Do any come from Florida?

A. Not from this gate. The perishables I am interested in on 94 originate between Savannah and Columbia, at various South Carolina Division points.

Q. Is that movement of substantial volume in perishable seasons?

A. Yes.

[fol. 459] Q. Will you explain fully now, Mr. Rogers, how the establishment of the truck service which we here propose will remedy that condition?

A. First, it will relieve these trains of making numerous stops at the small intermediate points for the purpose of unloading this LCL freight. It frequently happens that the delay, in itself, of stopping to unload the freight is not the extent of the delay. That is particularly true during the Florida season, when we have on our limited passenger trains. These freight trains, stopping for a short time to unload this freight, are then caught by these passenger trains, and a fifteen-minute delay at times may mean an hour or more.

Q. You mean a fifteen-minute delay consumed by the actual operation of stopping may mean an hour's delay in waiting for the passenger trains to pass?

A. That is correct. They catch this train in the block, and it is unable then to proceed to another station.

Q. This being a single-line operation?

A. Single-line operation.

Q. Will the establishment of this truck service, with the consequent elimination of the local delivery service by your train No. 94, enable you to completely eliminate the delay in schedule and the breaking of the connection with train No. 80 for Eastern destinations on this perishable traffic?

[fol. 460] A. To a large extent it will.

Q. It will very largely eliminate it?

A. Will very largely eliminate it.

Q. That, I presume, is a very important factor in the transportation of perishables—prompt delivery?

A. Oh, yes. We have arbitrary schedules that we have to meet in the connection with Train 80 at Hamlet. We have to meet those schedules, or else the traffic will sustain twenty-four hours' delay, because the Eastern markets will not put the stuff on the market arriving late.

Q. You mean if the perishable shipment is delayed twenty-four hours later than its scheduled arrival it can not be marketed?

A. I mean if it reaches the New York market later than the agreed zero hour it is arbitrarily carried over for twenty-four hours.

Q. That, I presume, is prejudicial to its sale on the market?

A. Yes, and also very productive of freight claims.

Q. What effect will the establishment of this proposed truck service have on local deliveries at points intermediate between Hamlet and Columbia?

A. For purely local business it will have no effect except for those stations on the C. & L. and the C., M. & C. At those points we will make an early morning delivery, because the freight will be in the depot when the agent opens [fol. 461] in the morning, as against an afternoon delivery at the present time. Now, for freight to and from these stations that originates or terminates between Hamlet and Wilmington, Hamlet and Raleigh, and Hamlet and Charlotte——

Q. Let me interrupt a minute there, Mr. Rogers. I am confining my questions for the moment to points intermediate between Columbia and Hamlet, and we will take up those other points later. You say that the proposed service will expedite deliveries on the Chesterfield & Lancaster and the Charlotte, Monroe & Columbia?

A. That is correct.

Q. Will you take a specific movement and illustrate how that improvement will be effected?

A. At the present time the C., M. & C. leaves McBee on the arrival of train No. 1, the southbound Seaboard passenger train handling mail and express. That train is due to arrive at McBee at 9.52 a. m. The C., M. & C. connection leaving McBee after the arrival of that train also carries over to the C., M. & C. stations merchandise that has reached McBee during the night on Seaboard trains 93 and 94. The result is that it is eleven o'clock or even later before they get into Jefferson. Under the trucking plan this business will be put in the Jefferson depot during the night and will be delivered, or available for delivery, at eight a. m.

Q. That is also true of all stations on the C., M. & C., [fol. 462] I take it?

A. That is correct.

Q. Is there any other station?

A. I believe there is one other little intermediate station, a flag stop—Angelus.

Q. Now, with regard to the Chesterfield & Lancaster?

A. As to the Chesterfield & Lancaster, they leave Cheraw in the morning, after the arrival of this same Seaboard No. 1, which is due at Cheraw at 9:15 a. m. The Chesterfield & Lancaster train taking the mail and express from off No. 1 also handles the merchandise brought into Cheraw by Trains 93 and 94 during the night, and some that comes down on the Seaboard switcher in the morning from Hamlet. Leaving Cheraw after nine o'clock, it is then an afternoon delivery at Pageland, the western terminus of the Chesterfield & Lancaster Railroad.

Q. About what time would that train get there in the afternoon?

A. Well, it is around noon, I would say.

Q. How would that service be improved by the installation of truck service?

A. The same merchandise or LCL freight that the C. & L. now takes out, leaving Cheraw after the arrival of Seaboard No. 1, would have been placed in the C. & L. depots during the night and would be available at all C. [fol. 463] & L. points at 8:00 a. m., or earlier if they desire.

Q. So it would save anywhere from four to eight hours, would you say, in delivery time?

A. That is correct. Unfortunately, during the winter season the mail and express is very heavy, and when they have extremely bad weather in the East No. 1 is late; and of course that means a later departure from both Cheraw & McBee.

Q. Those C. & L. and C., M. & C. trains await the arrival of No. 1?

A. Wait for No. 1.

Q. Have you anything else to say regarding the effect of the truck service upon points intermediate between Hamlet and Columbia?

A. The only other intermediate effect on LCL business—we handle from Hartsville (the cotton mills and other mills in that territory) daily cars going to Hamlet Transfer. The earlier arrival of No. 94 at Hamlet will insure those cars being worked for the transfer the same morning of arrival, for forwarding on our Western package train No.

85, which is due out of Hamlet at 12:30 noon but which we plan, in order to improve our service, to set up some two hours or more.

Q. So that will save approximately two hours of delivery on that train?

A. That is correct. Then we have an Eastern merchandise train for Portsmouth, No. 82, that leaves Hamlet at [fol. 464] 12:01 p. m. This will enable us to effectively and successfully work these cars at the transfer the same morning of their arrival.

Q. Sometimes that is not done now?

A. Sometimes we are unable, with the late arrival of No. 94, to always complete the movement.

Q. You described the effect upon traffic moving from Hamlet south. Is there any effect which the truck service will have on traffic moving to intermediate points from Columbia north?

A. Well, the same improvement in the arrival at the stations on the C., M. & C., at Jefferson and McBee, and at the stations on the C. & L., between Cheraw and Pageland, will be effective on business moving northward.

Q. The situations are entirely analogous, then?

A. That is true.

Q. I interrupted you in your reference to the movement from this territory to points beyond Hamlet. Will you now continue your statement with regard to that movement?

A. We are, as a part of this program, asking for similar truck service between Hamlet and Wilmington and between Hamlet and Raleigh. We did have such a truck between Hamlet and Monroe. We contemplate a change in our train service out of Charlotte, and with this change in train service and the additional truck service any busi- [fol. 465] ness that originates at an intermediate station between here and Hamlet for a point between Hamlet and Wilmington or Hamlet and Raleigh or Hamlet and Charlotte will be advanced twenty-four hours. For instance, a shipment moving out of Hartsville for, say, Laurinburg or Lumberton will at the present time go into Hamlet on No. 94 this morning, be worked at the Hamlet Transfer today, move out of Hamlet on the package car on Train 78 tonight, and be delivered at Laurinburg tomorrow morning, on the second-morning delivery. Under this schedule such a shipment would be picked up at McBee on the northbound

truck and connect with our Hamlet-Wilmington truck that night and make first-morning delivery at Laurinburg.

Q. Laurinburg being on the Hamlet-Wilmington line?

A. Yes, sir. The same thing applying, of course, to intermediate points between Hamlet, Monroe, and Charlotte, and Hamlet and Raleigh.

Q. So that as to deliveries to points on the lines which you have just mentioned, I understand there will be a twenty-four hour saving in time?

A. That is correct.

Q. Which will be made possible only by the inauguration of this truck service?

A. That is correct.

Q. In describing the points on the Chesterfield & Lancaster I think you mentioned Chesterfield, but you did not [fol. 466] mention Pageland.

A. I placed that as the terminus of the C. & L. Railroad.

Q. So that all references to Chesterfield would be likewise applicable to Pageland?

A. Yes, sir.

Q. I have heard you mention, several times, Hartsville. Has that any particular significance with relation to this traffic?

A. That is a very productive territory—very good business from that territory to and from the Eastern markets.

Q. And there is a substantial tonnage moving out of there?

A. Yes, sir.

Q. For which the proposed truck service will be advantageous?

A. To some extent, yes, sir.

Q. For the record, will you please state the proposed schedule of these trucks?

A. On the northward trip, leave Columbia at 7:00 p. m. and follow the Seaboard through to Hamlet, arriving at approximately 11:20 p. m. On the southward trip, leave Hamlet at approximately 1:00 a. m., follow the Seaboard to Cheraw and follow the Chesterfield & Lancaster to Pageland and the C., M. & C. from Jefferson to McBee, then follow the Seaboard into Columbia, arriving here at approximately 6.10 a. m.

Q. Does the truck reach or serve any station not served [fol. 467] by the rails of the Seaboard?

A. It touches and serves no stations or towns excepting those served by the Seaboard and its two subsidiaries, the Chesterfield & Lancaster, and the Charlotte, Monroe & Columbia.

Q. Do those highways which are to be used by the trucks parallel the rails of the Seaboard or its subsidiaries?

A. Yes, sir.

Q. Closely?

A. Very closely.

Q. Do we propose, Mr. Rogers, any reduction in train service or crews in this operation?

A. None whatever. There is no reduction in train service; no reduction in employment. In fact, it will increase employment.

Q. To the extent that it is necessary to employ drivers, I suppose?

A. Well, in addition to that, because of the night operation of the warehouses at some of the key places, such as Charlotte, Monroe, and Hamlet, and Columbia, we shall probably have to have one or more men at each of those points. Just exactly the extent of that we do not know until the volume of business develops.

Q. Until we have had some experience?

A. Yes.

[fol. 468] Q. Will there be any saving in expenses for fuel?

A. Yes; this will eliminate stopping Trains 93 and 94, and to the extent of the saving in fuel and some small crew time—overtime—there will be a saving. The principal saving will be the fuel and in the expense of stopping and starting a heavy train.

Q. I suppose, of course, it is impossible to determine the amount of that saving in advance?

A. It is rather difficult.

Q. But we do know that stopping and starting trains consumes fuel?

A. Yes, sir.

Q. What will be the effect, if any, of the service we are proposing upon competitive truck lines?

A. To the best of my knowledge there is no competitive truck line in this territory excepting between Columbia and Camden. The effect of this will be just the same as if we put into effect an improved train service.

Q. Do I understand you to say that we are making no effort and have no purpose to carry anything except traffic that is now carried by rail?

A. That is correct. The business that we are now carrying in freight-car movement under railroad bills of lading and railroad freight bills will simply be carried from station to station by truck, to be delivered or received at these [fol. 469] intermediate stations by the regularly established railroad agent at the regularly established railroad depot.

Q. You say the effect will be no greater than if we were to put on additional train service. By that I suppose you mean train service whose schedules and speed would be the same as the truck service which we propose?

A. That is correct.

Q. What is the advantage to the railway of using truck service *ice* rather than improving our train schedules?

A. One, of course, is the question of economy. The volume of business does not justify additional train mileage over what we are now providing. This is the most economical way of accomplishing the purpose. The second is, of course, that if you put on one train you have to put on two, because you have the opposite movement always. Of course, that adds to the expense of operation.

Q. Train service, of course, is enormously more expensive than truck service?

A. Yes, sir.

Q. And is only justified, of course, if the volume of traffic is there?

A. That is correct.

Q. To make the record entirely clear, Mr. Rogers, if we put on an additional train to handle the local business which is to be handled by these trucks, would the volume of busi- [fol. 470] ness and the revenue to be derived therefrom justify the additional expense?

A. The total receipts would not pay the out-of-pocket cost.

Q. The out-of-pocket cost?

A. The total receipts would not justify it.

Q. Have you any statement to make with regard to the nature of the traffic to be carried by these trucks? Is it the kind of traffic which would be carried by competitive truck lines if they existed?

A. Some of it is. Of course, we would not carry the same classes of freight that we now carry in our freight cars.

Q. How about the distance which the traffic is hauled?

A. The majority of this business which we handle at the present time and the available business is long-haul business—interstate business. We handle very little local business, station to station; for instance, from McBee to Camden or from Columbia to Blaney. There is practically none of that business moving over the railroad. The business that we handle is largely the business that comes into Columbia in through package cars for distribution, and on the southbound movement it is very largely the business which comes into Hamlet Transfer in our package cars for distribution. We handle in our Hamlet Transfer package cars from all over the country—Chicago, St. Louis, Philadelphia, Portsmouth, Richmond, Atlanta, Columbia, Jacksonville; and then the larger mill towns, such as Hartsville [fol. 471] and Wadesboro and Lumberton, they load cars of merchandise brought CFC—that is, cotton factory products—into the Hamlet Transfer for distribution throughout the United States through other package cars.

Q. What do you mean by coming into the Hamlet Transfer from the points you have mentioned?

A. As an illustration, the C. & O. Railroad in Chicago loads each day a package car into Hamlet Transfer. That makes the third-morning delivery at Hamlet.

Q. From where?

A. From Chicago. That car, of course, brings into Hamlet freight for delivery throughout this part of North Carolina and South Carolina that originates at Chicago and the Chicago territory.

Q. And points intermediate between Chicago and Hamlet?

A. No intermediate points; it is a through car that leaves Chicago—sealed car—for the Hamlet Transfer.

Q. What happens to it when it gets to Hamlet Transfer?

A. When it gets to Hamlet we load that business out for intermediate stations between Hamlet and Columbia, Hamlet and Wilmington, Hamlet and Raleigh.

Q. Let's confine ourselves to the Hamlet and Columbia territory. It is then loaded, as I understand, on a car which distributes it to the Hamlet-Columbia territory?

[fol. 472] A. That is right.

Q. As well as all other territories of destination?

A. Yes, sir. We have similar cars that come in there from Portsmouth, in connection with the steamboat lines at Portsmouth, that bring the New York, Philadelphia, and Baltimore water traffic.

Q. That traffic is not now being handled by truck?

A. No, sir.

Q. It is long-haul traffic?

A. Long-haul traffic.

Q. Do you conclude from that that this long-haul traffic would continue to move by rail whether we establish this truck service or not?

A. That is correct.

Q. And consequently the only result would be in the expedited delivery of this long-haul traffic through the use of the truck service which you have previously described?

A. That is correct.

Mr. Abeles: That is all on direct, Mr. Chairman.

Cross-examination.

By Mr. Watkins:

Q. Mr. Rogers, I suppose you are more or less familiar with the truck lines that operate in this territory?

A. To some extent, yes, sir.

Q. Do you know where Barnwell Brothers operate?

[fol. 473] A. No, sir.

Q. Horton Motor Lines?

A. No, sir.

Q. Miller Motor Express?

A. No, sir.

Q. You do not know that those lines maintain a truck service from the Carolinas directly into New York?

A. To the best of my knowledge they do not operate a truck line paralleling the Seaboard between Hamlet and Columbia.

Q. You testified a minute ago, I think, that the majority of the traffic that would be handled as a result of this is long-haul traffic?

A. The majority of the traffic handled is the same traffic that we are now handling.

Q. It is long-haul traffic?

A. Yes, sir.

Q. And there is long-haul traffic moving by motor carrier from the Carolinas to the Eastern points?

A. So I understand. But there is no motor carrier, to the best of my knowledge, paralleling or serving this particular territory.

Q. We are not discussing that question, because, as I understand, the basis of your purpose is to handle long-haul traffic, as you stated, I believe.

A. That is correct. The long-haul traffic is the larger [fol. 474] portion of the traffic that we are handling.

Q. Yes. Then it seems we should give consideration to long-haul traffic rather than the short-haul. Now, the Carolinas generally manufacture quite a lot of cotton-factory products.

A. Yes.

Q. And I suppose you are familiar with the fact that these truck lines operating between the Carolinas and the East handle a large portion of these cotton-factory products?

A. They handle some of it, yes.

Q. Then to that extent you would be competing with these truck lines?

A. Not in this territory.

Q. You would not be competing with the truck lines that handle the cotton-factory products from Hartsville to New York?

A. To the best of my knowledge there is no truck line paralleling the Seaboard from McBee to Hartsville to Hamlet along the line that we are following.

Q. That is not my question. I have granted that, and you have said it three times, and I assume it is true.

A. In fact, I do not know that there is a truck line between Hartsville and New York.

Q. If there were a truck service?

A. If there were a truck service they would be in competition with us.

[fol. 475] Q. That would be true from Columbia?

A. That would be true from Columbia.

Q. And from Camden?

A. Yes, sir.

Mr. Abeles: Do you propose to show the existence of truck lines?

Mr. Watkins: Probably.

Mr. Abeles: I want to know now, because if you do not the question is irrelevant.

Chairman Darby: I do not think it is necessary to take up time about packages picked up from Columbia to the Northern markets when this particular truck would not pick up any packages in Columbia going to the Northern markets.

Mr. Watkins: Mr. Chairman, as has been stated by the witness, this is part of a plan to *ap*rallel the entire line of the Seaboard with these truck operations.

The Witness: No, sir, I did not say that.

Mr. Watkins: They parallel it all the way from Richmond to Savannah.

The Witness: No, that is not correct.

Mr. Watkins: Doesn't Application Sub. 7 here apply from Richmond to Raleigh?

Mr. Abeles: That is correct.

Mr. Watkins: And doesn't Sub. 3 apply from Richmond to Hamlet?

[fol. 476] Mr. Aveles: Yes, sir.

Mr. Watkins: And the main application from just out of Columbia to Garnett, which is very close to Savannah?

Mr. Abeles: Yes, sir.

The Chairman: We are not on that application, Mr. Watkins.

Mr. Watkins: No, sir, but the whole scheme must be given consideration.

The Chairman: We will take them up one at a time.

Mr. Watkins: The difficulty we are faced with here is that the S. A. L. in filing these applications did it in such a way as to prevent the Commission from seeing the full picture, and that is what I am trying to present.

The Chairman: I think the Commission can see the picture very clearly.

Mr. Self: What was Mr. Watkins' question?

Chairman Darby: On the point of picking up packages in Columbia for the Northern markets, when I understand the truck will not pick up such packages. There will be no packages picked up in Columbia going to the Northern markets on this particular truck line.

Mr. Watkins: Is that correct?

The Witness: That is correct.

Mr. Self: It would not pick up anything between Columbia and Hamlet for delivery to Hamlet that was destined to [fol. 477] Washington, D. C., for instance?

The Witness: Yes, sir. We would pick that up for forwarding from Hamlet by freight car.

Chairman Darby: The only thing that is picked up in Columbia would be stuff going to these local stops.

Mr. Watkins: Do I understand that the application is limited so that the southbound truck from Hamlet to Columbia would not handle freight destined for Columbia?

The Chairman: If I understand right, it would be the freight that is picked up between Hamlet and Columbia and going south beyond Columbia, in less-than-carload lots.

Mr. Watkins: Would you be agreeable to having your certificate so limited, so that it would not allow you to carry freight originating north of Hamlet destined to Columbia?

The Witness: No, sir.

Mr. Watkins: If the purpose of this, in connection with these other applications, is to give them a complete trucking system from Richmond to Savannah and from Wilmington to Rutherfordton, I think that the questions which I have been trying to bring out are pertinent.

Mr. Abeles: I think the witness can answer that question, if you will repeat it. It has been a long time since it was put.

Mr. Watkins: All right, sir.

[fol. 478] By Mr. Watkins:

Q. Is it your purpose to handle a shipment, say, from Wilmington to Columbia by truck from Wilmington to Hamlet and by truck from Hamlet to Columbia?

A. Yes, sir, we would handle such a shipment.

Q. Then the effect of this application, in connection with Sub. 5, is to have a through truck operation between Wilmington and Columbia?

A. In an isolated case that would perhaps be true, but we now load from Columbia, from Hamlet, and from Wilmington through freight cars. Those through cars will be continued. A shipment that might be handled by the truck from Wilmington to Columbia or from Columbia to Wilmington would be an exceptional case, as a general propo-

sition, because with the through cars between those points there should be no necessity for it. But if one did show up, where it was most convenient, and it could be expedited, why I should say it would handle it.

Q. Didn't you testify a few minutes ago that your truck on the Columbia-Hamlet run would make connections with the truck from Wilmington to Hamlet?

A. That is correct, and I used as illustration the intermediate points, to and from which there is at the present time no established package-car service.

Q. Then you have set up, by your schedules, a system whereby you would be prepared to handle through freight [fol. 479] from Wilmington, North Carolina, to Columbia by all-truck service?

A. It would be possible.

Q. And your schedules are set up so it would not only be possible but it would beat the rail service?

A. Yes.

Q. So the most economical way of handling freight from Columbia to Wilmington would be by all-truck service?

A. In certain cases it would probably work out to that extent.

Q. Does your proposed schedule from Raleigh to Hamlet connect?

A. Northward?

Q. Yes.

A. Yes. Southward I believe it does not.

Q. So it would probably work out to be more expeditious between Raleigh and Columbia by all truck service?

A. No, the schedules would work out there to the best advantage by rail.

Q. Let's take the schedule of the truck now that moves from Monroe to Hamlet. You have that service now, haven't you?

A. Yes.

Q. And you are proposing a service from Rutherfordton to connect up with this service at Monroe?

A. Yes, sir.

[fol. 480] Q. Which would give you service from the cotton-mill area around Charlotte?

A. No, I would say that truck service from Rutherfordton would generally connect with train service at Charlotte, and Charlotte to Hamlet by train service.

Q. Why does your application cover from Rutherfordton to Monroe rather than from Rutherfordton to Charlotte?

A. Because I want to serve the intermediate points from Charlotte to Monroe.

Q. But you have your service scheduled clear through, haven't you?

A. Have from Rutherfordton to Monroe. But the business west of Charlotte coming into Charlotte by truck will be moved by train into Hamlet.

Q. Would you be willing for your application to be so limited?

A. No, sir.

Q. Then, while you have stated that in certain instances you would use rail service in connection with truck service, you are not willing for any of your applications to be so limited? Is that correct?

A. That is correct. That is a question, I think, that counsel can answer.

Mr. Abeles: I have already answered it.

By Mr. Watkins:

Q. Do you propose to move any truck-load business on [fol. 481] any of these routes? Full truck loads from any of these points?

A. We are going to move the volume of business that is presented, whatever that is. Under present conditions there is no truck-load movement. Now, we are making certain setout merchandise cars. When the business gets heavy enough, we set out these cars. At the present time we have a car from Hamlet to Cheraw that contains freight for the C. & L., one from Hamlet to McBee, and one from Hamlet to Camden. For instance, the Hamlet-Camden car would contain freight for Bethune, Cassatt, and Camden. They would unload freight at Bethune and Cassatt and set the car out at Camden. Some of that would continue.

Q. Would this truck that leaves Hamlet at one in the morning carry any freight destined to Columbia, South Carolina?

A. Ordinarily no, but it might.

Q. The purpose of it would be to drop off freight at intermediate points?

A. That is correct.

Q. But it would not have freight for Columbia?

A. As a general proposition it would not have freight for Columbia. There might be a delayed package or something of that sort that would show up that would be put in. But ordinarily it would not carry freight from Hamlet to Columbia. Just ordinarily good railroading would mean [fol. 482] that it would move by solid car from Hamlet to Columbia, by train service.

Q. Do you know how long the Seaboard Air Line has been in receivership?

Mr. Abeles: I don't think that is relevant.

Mr. Watkins: It is a question of being ready, willing, and able to operate under this Act.

Mr. Abeles: Are you going to challenge the ability of the Seaboard to operate this truck service from a financial standpoint?

Mr. Watkins: I am.

Exam. McCaslin: I might say there that the burden would be on the Seaboard to show that it is ready, willing, and able.

Mr. Watkins: Did you answer the question?

A. I don't recall the exact date.

By Mr. Watkins:

Q. About six years?

A. Something like that.

Mr. Watkins: That is all.

Examination by the Board.

By Mr. Self:

Q. You may have stated this, but I did not catch it. What are the commodities that originate in the territory affected between Pageland and Cheraw and between Columbia and Hamlet that would move in emergency shipment?

A. Nothing of any consequence originating in that local territory for outbound movement of any kind. The big [fol. 483] percentage of all of the business is inbound, to these stations.

Q. And it would be distributed, coming in from long distances, rather than picked up and carried to Hamlet?

A. That is correct, yes, sir.

Q. Have you made any estimate of the less-carload business that would originate between these points, destined to Hamlet, going out or coming in?

A. No, sir. The only thing we have any record of is the total LCL business originating at these stations, which includes cotton and all such commodities.

Mr. Abeles: Would you like to have that, Mr. Commissioner?

Mr. Self: I was just thinking that in order to show public convenience and necessity you ought to show something about the volume of business in this territory.

Mr. Abeles: I might say at that point that, our principal purpose in establishing this truck service being to relieve the trains of local service, the fact that there is some traffic originating at all these points would suffice for that purpose. I think the witness can give the total figures, if you wish it.

Exam. McCaslin: I think he should if he can.

Mr. Self: I think it is important for your side of the question to do it if you can.

[fol. 484] Redirect examination.

By Mr. Abeles:

Q. Have you the figures there for the total LCL traffic?

A. I have for six months.

Mr. Self: You see, no matter what we do here, the Commission is going to want some figures.

The Witness: I have no figures on the C. & L. or the C., M. & C.

Mr. Self: Have you made any estimate of the less-carload shipments out of Hamlet over the territory involved in this application?

The Witness: I haven't those figures. They can perhaps be secured. I have got the figures for a six-months' period with me, showing the total inbound LCL merchandise freight and the total outbound merchandise freight in both directions.

Mr. Self: I think that would be satisfactory.

By Mr. Abeles:

Q. Have you those figures before you?

A. In round figures, yes, sir.

Q. Can you give them for the record?

A. For the six-months' period ending December 31, 1937, in tons, it was as follows:

	Tons	
	In	Out
Kollocks	9	2
Cheraw	529	553
Patrick	31	53
McBee	66	6
Bethune	71	90
Cassatt	11	1
Camden	430	116
Lugoff	49	213
Blaney	48	74
Columbia	3479	613

[fol. 485] (Witness continues.) Now, this period—August, 1936, to January, 1937, took the four months with outbound cotton. That is the reason for that tonnage. There is no carload movement, as a general thing, at most of the local stations. At most of the local stations the cotton movement is the important movement.

Mr. Self: You do not consider cotton, generally, as less-carload movement?

A. No, sir, but it is considered in these figures. We would, for instance, pick up a single bale of cotton at Bethune, perhaps, to save a train stop. Probably we would not carry that all the way in to Hamlet or Columbia but drop it at some intermediate point.

Q. Do you include any tobacco in there?

A. There is practically no tobacco of any appreciable amount in there; it is just not a tobacco-raising territory. Included in it, for instance, though, are shipments of as much as 10,000 pounds that were loaded at those stations and billed out as a through car, but carrying the local rate. Due to going to several consignees, it was included in this tonnage. It does include lumber.

Mr. Self: And other minimum carload shipments?

A. Yes, sir. Includes all shipments at less-carload rate.

Chrmn. Darby: Any other questions?

Mr. Watkins: Yes, sir.

[fol. 486] Recross examination.

By Watkins:

Q. Mr. Rogers, you have some intrastate rights in the State of South Carolina, have you not, to operate motor vehicles?

A. Intrastate, yes, sir.

Q. Where are those rights?

Mr. Abeles: What is the relevancy of that?

Mr. Watkins: Part of the general scheme.

Mr. Abeles: We have here before us an application for interstate rights. I can not see any possible relevancy of intrastate rights within the state, Mr. Chairman. I do not want to cut Mr. Watkins short, but at the same time I do not want to cumber the record with unnecessary testimony.

Mr. Watkins: This is a hearing on convenience and necessity; and the service being performed, either intrastate or interstate, has a bearing on the validity and purpose of these applications.

The Chairman: Mr. Abeles, you object to his question?

Mr. Abeles: If I understand, he is now asking what intrastate rights the Receivers have in South Carolina. I believe that is right?

Mr. Watkins: That is right.

The Chairman: I am going to note your objection and let him answer the question.

By Mr. Watkins:

Q. Will you answer it, please?

[fol. 487] A. The only knowledge I have is that we have a permit from the South Carolina Commission covering the operation of this particular line that we are now hearing for the interstate permit.

Q. Are you now operating that line?

A. Yes, sir.

Q. Have you got any intrastate rights between Gaston and Garnett?

A. I do not know.

Exam. McCaslin: That is not proper in this hearing.

Mr. Abeles: I object to all these inquiries about intrastate rights.

The Chairman: I noted your objection, but I let him answer the question. I do not think the question as to the Garnett and Gaston rights has any bearing on this.

Mr. Self: Off the record.

(Discussion between members of Board and Mr. Watkins, outside the record.)

The Chairman: What question was it you wished to ask him, Mr. Watkins? State it again.

Mr. Watkins: My question was whether he had intrastate rights between Hamlet and Monroe.

Mr. Abeles: The Board understands that I object to all these questions, does it not?

The Chairman: Note the objection, and he may answer [fol. 488] the question.

A. (By witness:) We now operate and have operated for several years i...rastate truck between Hamlet and Monroe.

Q. When did that operation begin?

A. About 1931, to the best of my recollection.

Q. Have you not got an operation between Gaston and Garnett?

Mr. Abeles: Just a moment, if the Board please. My understanding was that the Board ruled that Mr. Watkins could inquire as to intrastate rights between Hamlet and Columbia, the route involved in this proceeding, but could not go beyond that. Intr-state rights have no relevancy whatsoever, so far as I can see, to the issue involved in either this proceeding or in any of the other interstate applications which are now pending before the Commission. The intrastate certificate grants no right whatsoever to carry interstate traffic, so if you find the Receivers possess these certificates they have no interstate rights; nor has this any bearing whatsoever upon the issue of public convenience and necessity involved in either this immediate case or any of the other proceedings pending before

the Interstate Commerce Commission to which Mr. Watkins has referred. I do not say that they are harmful, but I think they are cluttering up the record with irrelevant matters.

Mr. Self: The first question Mr. Watkins asked was if they held any intrastate rights in South Carolina. Then, [fol. 489] in argument, we reached a point where he inquired specifically about two intrastate points, which related to the other case. The Chairman ruled, as I understand it, that he could ask about service between Hamlet and Columbia but not about Gaston and Garnett.

Mr. Abeles: Every one of these questions, as I understand it, except the Hamlet-Monroe operation, relates to cases now pending before the Commission on other routes and which have been set for hearing by the Commission at other times and places.

Mr. Watkins: As I understand the ruling, I am not permitted to ask questions concerning the present truck operations of the applicants under intrastate rights except where they parallel the application here being heard.

Chairman Darby: Mr. Watkins, I do not think the question should be permitted to come in in regard to a case that will come before a board later on. You asked the question about specific points, but had your question been in general, I think the Board would have allowed it to have been answered.

Mr. Watkins: May I ask this question? Where does the Seaboard Air Line Railway presently operate trucks?

Mr. Abeles: Are you speaking of South Carolina or all over its system?

Mr. Watkins: Speaking of the entire system.

[fol. 490] Mr. Abeles: Of course, I object to that. I think it is so far afield that it can have no possible bearing on this application.

The Chairman: I am going to allow you to note your objection but will rule that he may ask the question.

Mr. Abeles: Yes, sir.

The Chairman: I think that will not hurt your case any.

The Witness: What was the question?

Mr. Watkins: The question was, where does the Seaboard Air Line Railway presently operate trucks?

A. The only one that I have specific knowledge of is between Hamlet and Monroe.

By Mr. Watkins:

Q. Your knowledge is limited to a certain part of the system?

A. My knowledge is limited to my own division.

Q. What is the boundary of that division?

A. Columbia to Raleigh and Wilmington to Rutherfordton, including certain short lines or branch lines which break out in that territory. What is known as the North Carolina Division.

Q. Then you do not know whether the Seaboard has any truck operation south of Columbia?

A. Not specifically, no, sir.

Q. Nor north of Raleigh?

A. Not to my present knowledge.

[fol. 491] Q. Even though freight might move through your division on the other divisions, you do not know how it moves outside of your division?

A. No, sir.

Q. You never make any inquiry concerning that?

A. No.

Mr. Watkins: That is all.

Mr. Abeles: Mr. Chairman, I shall have some redirect examination of this witness, but I understand that at this time you wish to adjourn.

Chairman Darby: Yes, sir; the hearing will recess until one o'clock. The Examiner has some witnesses that he did not finish up last night, and it will take him some forty-five minutes or an hour, and it would not be necessary to convene back here until one o'clock.

(Whereupon a recess was taken, at 11:30 o'clock a. m., until 1:00 o'clock p. m.)

Afternoon Session

Chairman Darby: Please come to order.

Mr. Abeles, you had not finished with Mr. Rogers, I believe?

Mr. Abeles: No, sir.

R. W. Rogers resumed the stand and testified further as follows:

Redirect Examination.

[fol. 492] By Mr. Abeles:

Q. Mr. Rogers, Mr. Watkins, in his cross-examination, attempted to develop the view that through the various truck services which we are proposing to establish we intend to set up a system of through truck transportation, in purpose and effect, that would compete with existing highway carrier agencies. He brought out, for example, the fact that we are now seeking to establish truck service between Wilmington and Hamlet and that we thus should be in position to carry traffic on trucks all the way from Wilmington to Columbia. I should like you to state your views on that assumption that Mr. Watkins made.

A. Such a movement would be possible but would be simply incidental and to a considerable extent improbable. We do not contemplate the elimination of any existing package cars. We have package cars out of Columbia into Hamlet, out of Hamlet into Columbia, out of Hamlet into Wilmington, out of Wilmington into Hamlet. The volume of that business is such that it would not be profitable for us to undertake to handle it by truck—the larger part of it, because it would necessitate so many trucks that the truck expense for that volume would be out of reason as compared with the cost of the train movement. In other words, where the volume is present the economical move is by train service.

Q. In other words, as I understand what you have just said, if we have train service available between, for ex- [fol. 493] ample, Wilmington and Columbia, we shall use the train service in preference to the truck service in the absence of some other reason for using the trucks. Is that correct?

A. That is correct. That is just ordinary good railroading. At the present time we make cars at Hamlet, for instance, for Cheraw, McBee, and Columbia. Our trains have carload movement to and from those points every night. The volume of the LCL freight going to those three towns justifies the set-out car, and consequently that is the economical thing to do, and that is what we would

continue to do. The points we are specifically trying to serve are the smaller intermediate points, where the train would normally have to make a separate stop for the simple purpose of having to handle a very small volume of LCL freight.

Q. Possibly one or two packages?

A. That is right.

Q. Where it would not be good railroad practice to set off a car?

A. That is correct.

Q. Have we any purpose, in both this immediate proposal and the others to which Mr. Watkins made reference, of substituting in its entirety truck service for train service?

A. None whatever. This contemplates no reduction in existing train service whatsoever.

Q. Can you, in corroboration of that, give me a specific [fol. 494] example of a shipment moving over, from Wilmington or from any point on the Wilmington-Hamlet line, to Columbia and tell us how it would normally move?

A. Well, of course, as a matter of actual fact there is practically no movement from intermediate stations in the two territories, but assuming that there was one from Blaney going to Lumberton——

Q. Lumberton being on the Hamlet-Wilmington line?

A. On the Hamlet-Wilmington line. On this trucking service it would move into Hamlet by truck and connect with the truck at Hamlet for Lumberton. A shipment out of Columbia would move in the Columbia-Hamlet merchandise train.

Q. If it were consigned to Wilmington how would it normally move from Hamlet?

A. By rail. That is the normal movement. There might be exceptional cases where something would go by truck.

Q. For example, can you give us an exceptional instance where we might want to use the truck?

A. Offhand, I should say only a delayed shipment or misrouted shipment or something of the sort, which is out of its regular turn, principally terminal-to-terminal movement.

Q. Where the delivery could be effected, because of those exceptional circumstances, by truck more quickly than by rail?

A. That is right.

[fol. 495] Q. But outside of these exceptional instances we would not abandon our rail service?

A. From terminal-to-terminal movement.

Q. I should like to ask you this general question. With reference to truck service already in operation, how does the cost of transporting traffic compare with train service?

A. Of course, there are many factors that you have to take into consideration. Speaking purely from memory, truck figures run from about eleven cents to twenty cents.

Q. Now, I am not referring to the comparative costs of truck and train operation, but to the comparative economy of shipping by rail, on the one hand, and by truck, on the other, where both forms of service are available.

A. Where there is any volume of business, the cheapest form of transportation we can possibly operate is rail transportation. Where you have a very limited volume of business, such as at these intermediate points—say a wheelbarrow load, the truck service or co-ordinated rail and truck service is the more economical.

Q. You mentioned the thought that in exceptional circumstances we might want to use all truck service between terminals, for instance, say from Columbia to Wilmington, or from Wilmington to Columbia; and you explained what those exceptional circumstances might be. Is that the reason we do not wish, as Mr. Watkins inquired, to restrict [fol. 496] our certificate to the extent he indicated?

A. That is right.

Q. In other words, it might, on occasion, impair the flexibility and utility of this service?

A. That is correct.

Q. Are you familiar with the cost of operating truck service?

A. We operate on my division one such truck now, between Hamlet and Monroe.

Q. And you have had experience with that for how long?

A. My experience has been over a period of about three years.

Q. Do you feel qualified to estimate the cost of operating the Hamlet-Columbia service involved in this proceeding?

A. Well, I haven't the detailed figures with me; but, speaking from memory, the cost of the truck would run somewhere between fifteen and twenty cents a truck mile.

Q. How does that compare with the per-mile cost of train operation?

A. For the service in this territory its cost would run between $1.05 and $1.25 a mile, depending upon the season of the year and the volume of the business and those things.

Q. So that, if you had to put on additional train service to accomplish the purposes which we are seeking through this application, it would cost you anywhere from five to six times as much per mile of operation to do it by train as to [fol. 497] do it by truck?

A. That is correct.

Q. Is there sufficient tonnage available or in prospect to justify any such cost?

A. There is not sufficient business to justify any additional train service—that is, regularly. We do have occasions, when we have excess tonnage, when we do run more than one train. Particularly, we do operate extra trains—operate solid melon trains—during the peak of the melon season.

Q. We would continue to do that during those peak seasons, would we not?

A. Oh, yes.

Q. This truck service would not affect that in any way?

A. Not at all.

Q. But normally speaking, there is not sufficient LCL traffic to justify the operation of an additional regular train?

A. There is not.

Q. And that is the reason we seek to inaugurate this truck service?

A. Yes, sir.

Q. Now, I want to refer to the subject of the less-carload tonnage involved in this territory through which the truck service is proposed. You gave some figures this morning, [fol. 499] but I should like to have you recapitulate those and tell us how much less-carload tonnage per year is consigned to and forwarded from the stations which will be reached by the proposed truck service.

A. I haven't the figures for the stations on the Chesterfield & Lancaster Railroad nor for the stations on the Charlotte, Monroe & Columbia Railway, but I have for the intermediate stations on the Seaboard.

Q. Between Hamlet and Columbia.

A. Between Hamlet and Columbia, but excluding Hamlet and Columbia, there is about 4,700 tons a year.

Q. And it would be a substantial relief to the freight trains if they were relieved of the necessity of picking up and delivering that tonnage at those intermediate stations?

A. That is correct.

Q. And that is really the primary purpose of this service sought?

A. That is correct. Of course, we do at the same time, Mr. Abeles, as I expalined this morning, expect to improve the movement somewhat by improved train service at Hamlet.

Q. Yes, I understood there would be other advantages, which you described this morning.

Mr. Abeles: That is all, Mr. Chairman, for this witness.

The Chairman: Any further questions, Mr. Watkins?

[fol. 499] Mr. Watkins: Yes, sir, just a few.

Recross-examination.

By Mr. Watkins:

Q. I understood that the reason you do not want your certificate limited is that if it developed to be a cheaper method of operation you would use truck service rather than rail service?

A. I said there might be times when such a thing would develop, yes, sir.

Q. And your primary purpose in this proposal is to save expense, isn't it?

A. That is one of the things. The primary purpose is to improve our train movement.

Q. By the elimination of LCL freight?

A. By the handling of that LCL freight on the trucks, thus permitting the through trains to make better movement over the lines.

Q. But you do contemplate an economy in the handling of less-than-carload freight?

A. The saving that you speak of, or the economy that you speak of, would be the elimination of stops by these through trains.

Q. But it would work an economy?

A. Some economy, yes.

Q. And wherever you could work economy by the use of truck service you would use the truck service rather than [fol. 500] the rail service?

A. Yes, I should say we would.

Q. And if it should develop that you could save money in the handling of LCL traffic between Wilmington and Columbia by truck you would probably use the through truck service rather than the joint rail and truck service?

A. If such a condition should develop we probably would; but it is difficult to see where, as a terminal-to-terminal movement, the truck can afford as economical a service as the established train service, where you already have the service on and it is simply a question of utilizing the service that you already have. If it were a question of putting on additional train service, then of course the truck operation would be the more economical.

Mr. Abeles: If that could be saved?

The Witness: If that could be saved.

By Mr. Watkins:

Q. What is your rail schedule between Wilmington and Columbia?

A. We have no through trains from Wilmington to Columbia. All service of that kind breaks on Hamlet. We have at the present time two freight trains each way a day between Hamlet and Wilmington.

Q. Take a typical shipment, Mr. Rogers, leaving Wilmington in the afternoon and being handled by rail service. What trains would that be worked on and at what times [fol. 501] would it move?

A. A shipment from Wilmington to Cheraw, I will say for example, leaving Wilmington, put in the depot this afternoon, would come into Hamlet tomorrow morning and should go out on the Hamlet-Cheraw switcher.

Q. It would leave Wilmington in the afternoon?

A. That is right.

Q. And reach Hamlet when?

A. Reach Hamlet probably two or three o'clock in the morning.

Q. When would it leave Hamlet for Columbia?

A. I was giving you an illustration to Cheraw.

Q. Let's say Columbia.

A. For Columbia it would leave on No. 93, at six p. m.

Q. Six p. m.?

A. Yes.

Q. And arrive at Columbia when?

A. For early next-morning delivery.

Q. That is second-morning delivery?

A. Second-morning delivery.

Q. I notice in your application 86687 Sub. 5 a shipment could leave Wilmington at 7.00 p. m., arrive in Hamlet at 12.30 a. m., and leave on the Columbia truck at 1.00 a. m., and arrive in Columbia at 6.00 a. m.

A. Yes, that is an overnight service.

[fol. 502] Q. That would give you an overnight service from Wilmington to Columbia, whereas your present rail service is two days?

A. Yes, sir.

Q. Then if it should develop that it is a much quicker method of transportation by motor carrier, would it not be possible that you would use truck service through?

A. Yes, it is possible that it could be used.

Q. Then by the use of these interlocking applications it is quite possible that you would develop through truck service between many of the points on your line?

A. There would be some, yes.

Q. And that is the reason you would not want to be limited in your applications to a co-ordinated truck and rail service?

A. That is one of the reasons, as I said a while ago, that we would not want to be limited.

Q. Then we are really getting away from this so-called co-ordinated rail-truck service, are we not?

A. To some extent, yes, sir. I have stated since the noon recess that there would be shipments perhaps occasionally in that territory that might make a continuous truck movement, but the thing we are trying to do is to relieve these through trains of having to make those intermediate stops.

Q. How long have those through trains been making those intermediate stops?

[fol. 503] A. Have been making them for years. For the past several years the volume of business, particularly the carload business, has been very small. Now that the pulp mills are opening up there is a lot of pulp wood being cut, and the blind sidings are putting out these cars, and the switching service and through service is increasing on those

trains, and we have to do something to insure earlier arrivals at both Hamlet and Columbia, as a I explained this morning.

Q. Well, instead of a co-ordinated truck and rail service, doesn't this amount to a substitution of truck service for rail service?

A. No, sir, it does not, because 95 per cent of the total volume, or more, will be handled at some point by rail.

Q. But you would not like to be restricted?

A. No, sir.

Mr. Watkins: I think that is all.

Re-redirect examination:

By Mr. Abeles:

Q. When you said, in response to one of Mr. Watkins' questions, Mr. Rogers, that to a certain extent we are getting away from the co-ordination theory, you did not mean, did you, that in any case where we could practically move a shipment from Wilmington to Columbia or from Columbia to Wilmington we would employ the truck service rather than the rail service?

A. Not a bit in the world. And I have stressed all along [fol. 504] that this does not contemplate the elimination of any existing rail service whatsoever.

Q. And when you said that approximately 95 per cent of the traffic—I think you said the traffic from terminal to terminal?

A. Ninety-five per cent of all the traffic.

Q. Ninety-five per cent of all the traffic would continue to be carried by rail?

A. No. What I was trying to emphasize is that this business that would move entirely by truck is very, very trivial in extent and that at least ninety-five per cent of all the merchandise would at some point be handled by train service.

Q. So what you meant is that the amount of traffic that would be handled by all truck, in what Mr. Watkins has referred to as a substitute rather than a co-ordinated service, is insignificant?

A. Very, yes, sir.

Q. So that this is, in purpose and effect, a co-ordinated plan?

A. Yes, sir.

Q. Let us suppose, Mr. Rogers, that we actually did seek to enter into an independent truck service; we should have to follow our rails, should we not, between Wilmington and Columbia?

A. Yes, sir.

[fol. 505] Q. Do you happen to know the highway route between those two points?

A. Only generally.

Q. Does it follow the rails?

A. Not the rails of the Seaboard.

Q. Is it shorter or longer than the Seaboard route?

A. Much shorter.

Q. Then if we did propose to establish all-truck service—which we do not, should we be anywhere near a position of parity with the independent truck lines?

A. We would have much greater mileage. In other words, our truck following our lines from Wilmington to Hamlet to Columbia would be going along two legs of a triangle, whereas a normal highway movement would be directly across from Wilmington to Columbia.

Q. In those circumstances, do you think we would ever undertake to compete with the independent truck lines?

A. No, sir.

Recross-examination.

By Mr. Watkins:

Q. What truck company were you thinking of when you said that their line from Columbia to Wilmington is much shorter?

A. I said if there were one. I do not even know that there is one, because the service we propose is entirely different from the service they offer.

[fol. 506] Q. And you have not made any study to find out whether or not there is existing truck service on any of the routes for which you have applied?

A. As a general proposition, I do not know the existing truck service, speaking from memory.

Q. Then you are not in position to testify that the existing truck service is not sufficient?

A. No.

Q. Isn't the Seaboard Air Line Railway starting on a program of paralleling its lines everywhere with motor truck service?

A. I can't answer that question, because I only know my own division.

Q. They have not left out any place in your division, have they?

A. No, except one or two isolated points, I would say.

Q. But you do not know anything about the general policy of the company?

A. No, sir.

Q. I believe you testified that the cost per mile of truck operation was about one-fourth of the train cost, where your volume is low?

A. No; I said one-fifth.

Q. Is that correct?

A. It will run somewhere in that neighborhood. The truck service will vary, and the railroad service will vary [fol. 507] as to cost, but one-fifth wil be a very conservative estimate. That is mile for mile.

Q. Then, speaking from your observation, if the tonnage from any particular points should decrease, you might then substitute highway service for rail service?

A. We see no such condition in sight, and it is not contemplated.

Q. For economy's purpose, if such a situation should develop you would take the more economical method of transportation?

A. We do not contemplate any reduction in train service, nor do I see that any service we have set up to this time could possibly take the place of any train service. As to what the future may develop, that, of course, is speculation. Certainly on this line in here, where we have only one train a day each way, it would be impossible to substitute truck service for train service.

Q. Do you contemplate any increased tonnage in connection with this movement?

A. In some cases, in conjunction with the improved train service which we hope to develop through Hamlet, yes, sir.

Q. That would be tonnage diverted from some other form of transportation?

A. Only to the extent that the present tonnage is being diverted.

[fol. 508] Q. Any additional tonnage that you might receive would be diverted from another line of movement, be it rail or be it truck?

A. That is correct.

Q. It might be from another railroad or from a truck line?

A. I said any increase in business would naturally be diverted from some other means of transportation—perhaps private truck. We have in mind, for instance, that many wholesalers now haul their own goods. We hope that some of that will come back to the railroad through this improved and co-ordinated truck service. Frankly, we think that is our largest field for increasing our business.

Q. Mr. Rogers, do you mean to tell me that you think the private truck is handling the tonnage to small towns?

A. Yes, sir, to a large extent.

Q. More than the common carrier?

A. Yes, sir.

Q. That is your view?

A. Yes, sir—that is, to these small places in here.

Q. There is a through rail service from Wilmington to Columbia via the Atlantic Coast Line, isn't there?

A. That is right, yes, sir.

Q. And to a certain extent your truck service from Wilmington to Columbia would compete with the Atlantic Coast Line?

[fol. 509] A. Just offhand I can not state whether the rule of circuity of route would permit us to handle Wilmington-to-Columbia business, or not. If it does, we already compete with Atlantic Coast Line. I don't know what their package-car service is from Wilmington to Columbia, or whether they have one or not.

Q. But you are cutting off twenty-four hours' time in your service from Wilmington to Columbia?

A. Yes, it would be possible in some cases to cut twenty-four hours out.

Q. Has your company ever operated any existing truck lines with the purpose of co-ordinating your rail service with such truck-line service, within your knowledge?

A. Not to my knowledge, no, sir.

Q. You would have knowledge of anything in your division?

A. Not necessarily. As a general proposition, if anything of that kind were up I would be told of it. But I

have not been told of this, and it is possible that it may be considered without my knowledge. As a general proposition I woud know it.

Q. The truck service that is being performed in your division is directly under your supervision, is it not?

A. Yes, sir.

Q. And if there were any co-ordinated truck service in connection with existing truck lines in your division, or any [fol. 510] attempt to make such arrangement, you would know about it?

A. As a general proposition, yes.

Mr. Watkins: That is all, I believe.

Mr. Abeles: These questions on cross examination, Mr. Chairman, broaden the field of this inquiry, and while I regret to prolong this examination there are certain very important points that I think I have to bring out.

The Chairman: You may bring them out.

Re-redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, the last series of questions asked you whether you had made any inquiry or had any knowledge of the possibility of utilizing independent truck lines for the service we have in mind. I wish you would explain or give your views on that as a possible or practicable plan.

A. Well, in this particular territory, to the best of my knowledge, there is no existing truck line except between here and Hamlet, so it would not be possible for existing companies to work out a co-ordinated Seaboard and independent trucking service. As a general proposition, as I see it, to work out a co-ordinated Seaboard-independent trucking service would mean that we would short-haul ourselves on freight to and from our own stations. That is one objection. The second objection would be that we would open our way-bills, our bills of lading, for the knowledge and inspection of a competing carrier and permit of [fol. 511] very intensive solicitation against us. A third is that so long as these are Seaboard trucks, with Seaboard men operating them, they are under the direct supervision of the Seaboard and we can control the schedules and have a more flexible service and can come nearer co-ordinating

it with our train service and more nearly relieve our train service of the things which we want to relieve it of.

Q. In other words, effectuate our purpose effectively?

A. Yes, sir. Another thought is that as long as they are manned by Seaboard employees we have supervision and direction of their movements and are in better position to police and supervise the services which we set ourselves up to render to the public.

Q. If we should enter into any such arrangement as Mr. Watkins suggests, we should, of course, be responsible for a shipment throughout its entire movement, should we not?

A. Well, that would depend upon the working agreement that you referred to, and that would have to be worked out. We would certainly be responsible to issue a clear receipt and so forth to that trucking line, and then we would certainly be responsible to the shipper, because the stuff would be traveling under Seaboard bill of lading.

Q. That is exactly what I meant—that we would be responsible to the shipper or consignee?

A. That is right.

[fol. 512] Q. Has that suggestion of Mr. Watkins any significance with reference to loss and damage claims?

A. Oh, yes, and the question of accounting in payment of freight charges, too. For instance, on a shipment moving from an Eastern point to Blaney, we will say, the Seaboard would be responsible to the Eastern lines to collect and reimburse them for their proportion of the through earnings.

Q. Then I take it that your attitude towards Mr. Watkins' suggestion, generally speaking, is that we could not afford to feed the transportation service of traffic for which we are responsible to the shipper to any independent agency which is not directly under our supervision and control?

A. That is my judgment, yes, sir.

Re-Recross examination.

By Mr. Watkins:

Q. You do interchange with other railroads, don't you?

A. Yes, sir.

Q. With the same responsibility?

A. No; each railroad is responsible for the shipment while in its care.

Q. Would a truck carrier be any less responsible than a rail carrier?

A. As it is, it would depend upon the system that is worked out. You understand that the accounting and the settlement of freight claims between the railroads was worked out on a throughly established basis agreed to by [fol. 513] all the railroads. Now, there is no truck line that is covered by that agreement, and if the Seaboard brought into this through service an outside trucking line then they would have to assume the responsibility and protect the connecting railroads.

Mr. Abeles: When you say "they" you mean whom?

A. The other rail carriers and the Seaboard that participate in the through haul.

By Mr. Watkins:

Q. But you have made no attempt to get a truck line into a similar agreement as the one existing between the rail lines?

A. No, and with the numerous truck lines that would be involved it seems to me it would be a job beyond comprehension to work it out.

Q. You mean the numerous ones with which you would have to make the agreement?

A. Yes.

Q. How many do you contemplate you would have to make the agreement with?

A. I am speaking about all the railroads in the United States and all the truck lines in the United States.

Q. I am speaking about the Seaboard Air Line Railway. Has the Seaboard Air Line attempted to enter into such an arrangement?

A. I told you a while ago not to my knowledge.

[fol. 514] Q. So you are not prepared to say whether it is possible or not?

A. The truck lines might be agreeable.

Q. And these objections that you have named were thought out by you without consultation with the truck lines?

A. That is correct.

Q. Do you know where the routes of the following truck lines are? Atlantic States Motor Line; Barnwell Brothers;

C. T. Jordan; Martin Motor Line; Lewis & Holmes Motor Express; A. D. Fowler Motor Express; T. G. Chaplin; Parrish Freight Line; and Poole Transportation Company.

Mr. Abeles: Is the question whether he knows where they operate?

Mr. Watkins: Yes.

Mr. Abeles: Mr. Chairman, unless he proposes by this question to impeach some testimony that has been submitted by Mr. Rogers on direct examination it seems to me that the cross examination has reached beyond bounds. My objection is simply for the purpose of keeping this proceeding within the proper limits.

Chairman Darby: Did you ask him the question if he knows where those truck lines operate?

Mr. Watkins: Yes, sir.

The Chairman: I do not see that that question will hurt [fol. 515] anything.

Mr. Abeles: It will not hurt anything, but I do not see that it will add anything.

The Chairman: I think he may answer that question. Do you know?

The Witness: I do not.

Mr. Watkins: That is all.

Examination by the Board.

By Mr. Self:

Q. Going back to the first part of your testimony this morning, one of the reasons for co-ordinating truck and rail service is to eliminate a lot of stops with the train?

A. Yes, sir.

Q. Assuming an identical case, where you would leave one of these points with the truck ahead of the train, how many stops do you estimate that would eliminate on a given train schedule?

A. I should say offhand in our discussion with the trainmasters we figured six each way a night on this particular run.

Q. You mentioned the fact there that there were certain less-carload shipments—that is, less carload as measured by rail. What percentage of that tonnage would you imagine could conveniently go by truck?

[fol. 516] A. Well, I should say that in this territory in here we would continue train movement of at least 75 per

cent of this tonnage, by box car. For instance, set out at McBee a car of freight for McBee and diverging points—that is, the Hartsville line and the C., M. & C. Railroad; and we would probably put in that car the freight for the intermediate points between McBee and Camden, so that when the truck got to McBee, having gotten rid of part of its load, it could pick this business up and carry it the rest of the way.

Mr. Self: That answers the question satisfactorily.

Redirect examination.

By Mr. Abeles:

Q. What is your mileage between Hamlet and Columbia?
A. One hundred and six miles, I believe.
Q. And in that distance you will eliminate these six steps?
A. Each way.
Q. Each way?
A. Yes, sir.

Mr. Abeles: That is all.

Exam. McCaslin: Does he have operating-cost data or anything?

Mr. Abeles: He has already testified to the cost of truck operation.

Exam. McCaslin: Of this operation?

Mr. Abeles: He has, and the cost per mile.

[fol. 517] Mr. Self: He said eleven to twenty cents per mile.

The Examiner: That is indefinite.

Mr. Abeles: Perhaps the Examiner would like to ask him some questions.

Exam. McCaslin: I would.

The Witness: Unfortunately, I did not bring those figures with me.

Questions by the Examiner:

Q. I just want to go into this. What percentage of load do you figure these trucks would carry from one point to another?

A. There are going to be certain points on the division where they will have a reasonably full load. That is the reason why, I should say, we would utilize our set-out cars,

to have good service in there and at the same time eliminate duplication of our set-out service.

Q. They would be moving cargo at LCL rates?

A. Yes, sir.

Q. Have you made any figures as to what the average yield per trip from Columbia to Hamlet should be?

A. I have not. We were primarily interested in trying to relieve 93 and 94, to get them into the towns with our through cars, for early placement of merchandise at Columbia and the perishables at Hamlet. Then, of course, we wanted if possible to conserve with it these LCL revenues.

[fol. 518] Q. Have you made any estimate of the net return which you expect to realize from the utilization of trucks and that from the local freight service, which you hope to reduce to some extent? I don't mean the amount of the service, but the use of the service will be somewhat reduced. Have you made an estimate on any basis such as 100 pounds?

A. No, sir.

Q. Or on a weekly or monthly or any other basis?

A. No, sir, I have not.

Q. Who is going to be in charge of your truck operation?

A. It is part of the division organization. Directly under the same division officers as the train service.

Q. What experience have your division officers had in the operation of trucks?

A. We have had the truck service on this division since 1932.

Mr. Abeles: I am going to bring that out in just a minute.

Exam. McCaslin: That is all.

Re-Redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, in the absence of actual experience with this operation, is it possible to make any intelligent estimate of the revenues that would accrue directly from the truck operations, based upon the cargo carried by the trucks at less-carload rates? What I am trying to get at is this: We do not know, do we, and in the absence of actual [fol. 519] experience we can not estimate what volume of

cargo the trucks are going to carry under the plan we have in mind?

A. No, sir.

Q. And we shall not be able to give any figures of that sort until we have had experience, shall we?

A. On this line?

Q. On this line.

A. No, sir.

Q. So any estimate you might have attempted would be virtually nothing but guesswork?

A. Purely guesswork.

Mr. Abeles: That is all.

The Chairman: Are there any further questions for the witness?

If there are no further questions, you may be excused.

Mr. Wm. T. Callahan: I represent the Brotherhood of Railway Trainmen. Up and down the State of South Carolina——

Mr. Abeles: Just a minute, Mr. Callahan. You have entered an appearance, haven't you?

Mr. Callahan: Yes, sir.

Mr. Abeles: Are you appearing in opposition?

Mr. Callahan: I am appearing for the Brotherhood of Railroad Trainmen.

[fol. 520] Mr. Abeles: In support or opposition?

Mr. Callahan: Opposition. I have just a brief statement I want to make. We are not appearing in opposition to the railroad's supplementing its service, but I appear for 640 railway trainmen in the state of South Carolina——

Mr. Abeles: This is just a statement, isn't it—not testimony?

Mr. Callahan: It is testimony. I wish to have it put in the record.

Chairman Darby: Then you will have to be sworn.

Mr. Abeles: We object, sir. We have some more witnesses, and if it is in opposition we think it should be deferred until the opposition puts in its testimony.

The Chairman: The testimony is out of order at the present time.

Off the record. (The Chairman made an announcement outside the record.)

We will take a short recess now.

(Whereupon a recess of five minutes was taken.)

Chairman Darby: Yet's proceed, gentlemen.

Mr. Watkins: I wish to make a motion. Mr. Chairman, the evidence introduced this morning by the applicant indicates that it is the purpose of the applicants to handle through traffic over all the routes covered by Dockets MC 86687 and sub numbers thereunder. Under Section 205-b [fol. 521] of the Motor Carrier Act, such applications should be heard by an examiner, as there are more than three states involved; or, if the Commission construes this section as limited only to motor-carrier operations, then there are three states involved, and the applications should be consolidated and heard by a joint board composed of representatives of the states of Virginia, North Carolina, and South Carolina. Thus this hearing is proceeding illegally. I make a motion that all these dockets be consolidated and set for hearing before the proper authority.

Chairman Darby: Mr. Abeles, we will hear from you.

Mr. Abeles: If the Board please, the section of the Act to which counsel for the protestants refers is Section 205-b, which provides, in substance, that when operations of motor carriers conducted or proposed to be conducted involve not more than three states the Commission shall, and when they involve more than three states the Commission may, refer the proceedings to a joint board composed of representativs of each of the states involved. The interprefation which counsel for the protestants places upon the Act would require the Commission, in every case involving interstate operations in which the motor-carrier service for which authority is being sought is not completely isolated from every other form of transportation, either rail or motor carrier, to refer the case to an examiner, because there is [fol. 522] potentially, at least, if not actually intended a through service involving every state in the country and every community in every state. Obviously, it seems to me, it was not the intent of Congress, in passing this Act, to take into consideration service connecting with that service for which authority is sought in the particular proceeding under consideration but merely to confine the test as to whether the proceeding shall be referred to a joint

board or an examiner (and, if to a joint board, to representatives of what states) to the physical operations involved in the motor-carrier application under consideration, and not to take into consideration the potentialities involved in every operation. Here we have an operation between Hamlet and Columbia, involving two states. The mere fact that we may, through connections with our rail service, transport traffic which is carried by the operation for which authority is sought into other states than the two here involved or even may, through other truck service for which we are seeking authority, transport it into a third state does not under the law, as we construe it, require the Commission to refer it to a board composed of representatives of any state other than those directly involved in the motor service for which authority is here sought.

Mr. Watkins: Mr. Chairman, my motion is based upon the theory that traffic between Virginia, North Carolina, [fol. 523] and South Carolina under these proposed operations would move under common management by motor carrier, and therefore common management and not interstate traffic is the test. I also apply the same common-management theory to the joint rail-truck service, which would extend the movement to other states than just the states of North and South Carolina, as the Seaboard Air Line's rail lines extend into other states. I am not basing this objection upon the possibility of interchanged freight but upon the theory that the freight would be handled by the applicants only.

Mr. Abeles: I might, in very brief reply, point out that, if by reason of a particular operation such as we have here there is a through movement into other states which might affect traffic in those states, I think it is the privilege of representatives of those other states to appear either in support of or in opposition to the particular operation; but I do not think that, under the Act, representatives of those states could become members of the board hearing the case.

Chairman Darby: Mr. Watkins, the Board will take your motion under consideration but will proceed with the testimony, and we will decide on your motion before a decision is made as to issuing or denying a certificate.

Mr. Self: We are all here, and we ought to put in the evidence that is here.

[fol. 524] Mr. Watkins: Mr. Chairman, I am not trying to stop the proceeding, as long as we are here; but I do think, in order to accomplish the purpose, there must be a definite ruling on this subject before we close the hearing in this case. May I suggest that we transmit this motion to the Commission immediately and see if it is possible to get a definite ruling?

Mr. Self: No, sir. We will pass on that ourselves. That is our business here.

The Chairman: Then, if you want to appeal from the decision of the Joint Board, you may do it.

Mr. Watkins: I doubt if you have the authority, because there are other cases coming before other joint boards.

Mr. Self: You will have a thirty-day opportunity to appear before the Commission. We think there is something in your motion, but we do not want to give a decision now. We want time to consider it.

Mr. Abeles: Might I say there, if the Board please, that even though the Board reach the conclusion that the motion of counsel for protestants is well taken, as a matter of discretion the evidence should be taken, so that in the event the Commission hould disagree with the Joint Board it will have the evidence before it and can act on its merits.

I also call the Board's attention to this language in the [fol. 525] Act, Section 205-b: "The joint board to which any such matter is referred shall be composed solely of one member from each state within which the motor-carrier or brokerage operations involved are or are proposed to be conducted." It does not say each state within which the motor-carrier or brokerage operations, or any service in connection with such operations may be conducted, but it confines the board to members from each state in which the motor-carrier operations themselves shall be conducted, and it seems to me quite obvious that from that language Congress proposes to confine the board to members from the states in which the proposed operations are to be conducted.

Chairman Darby: We will proceed with the testimony, gentlemen.

Mr. Abeles: I call Mr. J. E. Leppard next.

J. E. LEPPARD was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. State your name, residence, age, and occupation.

A. J. E. Leppard; residence, Chesterfield Court House; occupation, attorney; age, forty-one.

Q. You are a representative in the South Carolina legislature, are you not?

A. Yes, sir, from Chesterfield County.

[fol. 526] Q. You reside at Chesterfield Court House. Is that close to the point shown on the map attached to this application as Chesterfield?

A. That is the town of Chesterfield. The court house and the town are the same thing.

Q. You heard Mr. Rogers' testimony this morning, did you not?

A. I heard the major portion of it, yes, sir.

Q. You heard the advantages which he stated would result from the inauguration of the truck service for which we are asking authority here, did you not?

A. Yes, sir.

Q. Will you tell the Board, from the standpoint of a resident of Chesterfield, your attitude towards this proceeding?

A. Yes, sir. I came down here, gentlemen, representing the public of Chesterfield County generally and particularly the people of the little town of Chesterfield. The town of Chesterfield is situated twelve miles from the town of Cheraw on the main line of the Seaboard. Six miles from Chesterfield is situated another little town in our county, called Ruby. Then three miles farther west is the town of Mt. Grogan. Nine miles farther west from the town is the town of Pageland. Ten miles southeast from the town of Pageland is the town of Jefferson. About ten or twelve miles southeast from there is the town of Mc-[fol. 527] Bee. All of those towns are situated in Chesterfield County. The beginning point is the town of Cheraw, and the ending point the town of McBee, here on the main line of the Seaboard Railroad. From the town of Cheraw the C. & L. Railroad runs from Cheraw west through the towns of Chesterfield, Ruby, and Mt. Grogan, with its

terminus at Pageland. From the town of McBee, running northwest, is a branch-line railroad running up to Jefferson.

Q. That is the C., M. & C. Railroad?

A. C., M. & C. At Chesterfield, which is in a rough way the center of the county, we are roughly about 65 miles from Charlotte—60 to 65—and 85 miles from Columbia. There is no common-carrier truck service in Chesterfield County. The merchants in these towns in Chesterfield County do the major portion of their business with the merchants in Monroe (wholesale merchants), Charlotte, and in Columbia. So far as the present rail service is concerned, merchandise or shipments or cargoes deposited with the railroad in Charlotte take about two days to get around there for delivery after they leave the town of Cheraw. They come down through Monroe down to Hamlet; if not a carload lot would be changed there and come down to Cheraw and on to Chesterfield, Ruby, Mt. Grogan, and Pageland. Or from McBee they come up to Jefferson, and there are some little shipping points on that line. The [fol. 528] situation is about the same with merchandise shipped out of Columbia. Now, our people, the merchants particularly, are very much interested in this proposition because by the truck service which is proposed, as we understand it, merchandise could be deposited with the railroad, delivered to them, the afternoon of today and come in over that truck service and be delivered in Chesterfield, Mount Grogan, Ruby, Pageland, and Jefferson the next morning. We have needed that service for a long time. A good deal of business, as has been testified here today, is done by private truckers. When they can get a truckload they will travel, and if they do not get a truckload they do not travel. There is no regularity or satisfaction in that kind of service. The merchants in these towns say that if they could get a regular——

Mr. Watkins: Isn't that hearsay?

The Witness: I will say from my knowledge, then, if you object to the hearsay. I know personally, from my own experience, that these merchants who are engaged themselves—a good many of them—in trying to truck their own freight would discontinue that, which has not been a profitable proposition for them, and take advantage of their service.

That is my viewpoint. I came down here as a private citizen; I have no connection with the railroad; I came down here at my own expense and at the expense of the [fol. 529] people of my county, particularly of my own little town.

By Mr. Abeles:

Q. That is all you have to say, Mr. Leppard?

A. I can add this. So far as the Seaboard's application is concerned, I feel that they have their depot facilities, and they propose to co-ordinate that truck service with the rail service, and it would be economical, and we could rely upon a more dependable service by them than we could by any ordinary trucking operation.

The Chairman: Any questions?

Mr. Watkins: No questions.

The Chairman: You may be excused, Mr. Leppard.

L. C. WANNAMAKER was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Wannamaker, where do you live?

A. Cheraw, in Chesterfield County.

Q. That is one of the points which would be reached by this proposed truck service, is it not?

A. Yes, sir.

Q. You heard the testimony of Mr. Leppard, just completed, did you not?

A. Yes, sir.

Q. Is your position with respect to this application the [fol. 530] same as his?

A. Identically.

Q. Is there any special circumstance, with respect to your point of residence or elsewhere, concerning which you would wish to testify, in addition to what he has stated?

A. No. I am equally interested in the whole public of Chesterfield County, and I believe that they are entitled to and need the saving in time that their shipments will get under this plan.

Q. You think that the business men of your community and the surrounding communities in your county would benefit by this co-ordinated truck service?

A. Yes.

Q. And the improvement which has been testified to this morning?

A. Yes.

Mr. Abeles: That is all.

The Chairman: Any questions, Mr. Watkins?

Cross-examination.

By Mr. Watkins:

Q. Are you particularly interested in Cheraw or the rest of it?

A. The entire county. I am, along with Mr. Leppard, a member of the lower House from Chesterfield County, and we feel that this is a proposal in the public interest of the shippers and those who will use the service.

[fol. 531] Q. What business are you in?

A. I am a lawyer.

Q. Do you know the present service in there, either by rail or truck?

A. Do I know the present service?

Q. Yes.

A. I understand that a shipment from Charlotte does not reach Cheraw as quickly as it will under this proposal.

Q. You have been told that?

A. Yes.

Q. You do not know how long it takes now from Charlotte?

A. I will state here, in answer to your first proposition, I have heard merchants in Cheraw complain of inability to get quickly small shipments from Charlotte to Cheraw. The Cheraw Hardware & Supply Company is one.

Q. Have you any information concerning the trucking service at Cheraw?

A. To my knowledge, I know of no established trucking service rendering this service from North Carolina into Chesterfield County.

Q. You are not familiar with the fact that the New South Motor Express operates daily schedules from Cheraw into Charlotte?

A. No, sir.

Q. You did not know that?

[fol. 532] A. No, sir. I do know that no service is rendered—no trucking service is rendered—from Cheraw to Pageland of the nature proposed here, and that section of Chesterfield County contains our heaviest population and our best lands. In other words, the section served by the C. & L. Railroad, which is paralleled by State highway No. 9, is the wealthiest and most populous section of that county.

Q. You are mainly interested in that part of the operation between Cheraw, Chesterfield, and Pageland?

A. Oh, no. From Pageland to McBee, through Jefferson, I would say this—that the lands around Jefferson produce the highest quality of cotton of any locality in Chesterfield County. The area lying between Cheraw and McBee, however, is poorer land; in fact, the United States Government is now in process of purchasing about 100,000 acres lying between Cheraw and McBee. So our agriculture and industry in that county lies in a triangle, from Cheraw to Pageland and back to McBee.

Q. All those points are in Chesterfield County?

A. Yes, sir.

Mr. Watkins: That is all.

Redirect examination.

By Mr. Abeles:

Q. Even if truck service is now rendered between Cheraw and Charlotte, that does not satisfy the requirements of these other communities on the Chesterfield & Lancaster [fol. 533] and the Charlotte, Monroe & Columbia?

A. Obviously not.

Mr. Abeles: That is all.

Chairman Darby: Any further questions, gentlemen?

You may be excused, sir.

Mr. Abeles: If the Board please, I have two other witnesses, Mr. John W. Crews and Mr. Joseph Berry, both representatives in the lower house of the State legislature from Richland County. Their testimony would be very much along the lines of that of Messrs. Leppard and Wannamaker; and in the interest of expedition I shall waive

calling them, merely stating that their testimony would be along the same line.

The Chairman: If they are here you might put them on to state that.

Mr. Abeles: I believe they are not here now. I do not think they can add anything to the record, and I will waive their testimony.

I should like now to call Mr. Stanley.

W. L. STANLEY, was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Stanley, state your name, residence, and position. [fol. 534] A. W. L. Stanley; Vice-President, Seaboard Air Line Railway Company, and Chief Public Relations Officer for its Receivers. Residence, Atlanta, Georgia.

Q. Are you an official of the corporation, Mr. Stanley?

A. Yes, Vice-President.

Q. Among your duties, I understand, is the forming of the policy of the railway and its Receivers with respect to the establishment of motor-carrier service adjacent to its rails. Is that correct?

A. I have had general charge of that, in connection with other officers of the company.

Q. And you are intimately familiar, are you not, with the policy of the company in that respect?

A. Yes.

Q. Will you please state, in your own language, the general purpose which is sought to be accomplished by the railway and its Receivers in the establishment of this, as well as other, motor-carrier service?

A. Our studies preliminary to the inauguration of any truck service have been based upon several considerations: First, the expediting of freight that has been delivered to us by the public for shipment; second, the co-ordination of rail and truck service; third, an effort to so arrange the schedules of our local freight trains that by the use of these trucks they may be operated at hours most convenient to the [fol. 535] public, especially in the handling of carload business to the smaller stations and in the switching of indus-

tries at hours most convenient to the operators of those industries. By that I mean that it has been generally and almost universally the custom to operate local freight trains in the daytime because the agency forces were on duty during those hours. By this arrangement, in many cases we shall be able to operate those local freight trains at night and to expedite the movement of less-than-carload freight for the smaller stations and to switch sawmills and other industrial plants at hours that will result in the least interference with the operations of those plants and also expedite the movement of the carload business from those industries. We have never sought to eliminate train service. We have sought, as was testified today by Mr. Rogers, to eliminate stops of the through trains at the small stations, so as to reduce the cost that is incident to those heavy through trains making stops at those stations, and to expedite the movement of through traffic. Our general purpose, however has been to give to the shipping public this co-ordinated rail and highway service and to expedite the business which the public sees fit to deliver to us. Of course, just what we shall do with each operation depends upon the facts and circumstances applicable to that operation. In many instances we load from the large wholesale shipping [fol. 536] points carloads of freight destined to the various small stations, which move by train at night to some central point. From the car is taken out the next morning the freight that is destined to the smaller stations within a reasonable radius and delivered by truck.

That, I think, in a general way, Mr. Abeles, answers your question.

Q. We have involved in this particular application the operation of a truck line paralleling two subsidiary lines of the Seaboard, the Chesterfield & Lancaster and the Charlotte, Monroe & Columbia. Will you state what effect this proposed operation will have upon those companies?

A. Mr. Rogers has already testified as to the physical results to be obtained by these operations. I might say that the Chesterfield & Lancaster Railroad and the Charlotte, Monroe & Columbia Railroad, both short lines, are subsidiaries wholly owned by the Seaboard Air Line Railway. They have never been able to pay their way. They have been unable, in the majority of the years, to pay their operating expenses, with the result that they have been a drain

upon the treasury of the Seaboard Air Line Railway. To the extent that their revenue may be increased by the use of these trucks, as we propose, to that extent the Seaboard Air Line Railway will be relieved of contributing to the deficit of these railroads.

[fol. 537] Q. From your experience with operations throughout the Seaboard system, do you feel that the inauguration of the service here proposed holds out hope of placing these subsidiary lines upon a self-sustaining basis?

A. Yes, it holds out that hope and certainly will have a tendency to reduce the loss which those railroads are now sustaining.

Q. We, of course, have no desire to abandon those railroads if it can possibly be avoided, have we?

A. The policy of the Seaboard Air Line Railway has been, as to all its branch lines, to exhaust every possible means to prevent their abandonment.

Q. Despite that policy, have they been compelled during the last few years to abandon some of their branch lines?

A. Yes, sir, especially in Florida.

Q. With consequent loss and damage to the communities served by those branch lines, I presume?

A. Yes. I have in mind one of the latest lines on the Seaboard Air Line Railway—the line to Cedar Keys, Florida—that had to be abandoned. That community now has no rail service of any kind whatever.

Q. That was a fishing community of considerable consequence, was it not?

A. Yes, sir, located on the Gulf of Mexcio. I might say, Mr. Abeles, this; that according to our theory there are [fol. 538] three forms of transportation by land, one solely by rail, one solely by highway, and (the third) a combination of rail and highway service. Each of those, properly developed, is in the public interest, and the latter is what we are trying to do.

Q. Mr. Stanley, the Federal Motor Carrier Act provides in Section 207 that in a proceeding of this character a certificate shall be issued by the Commission if it is found that the applicant is fit, willing, and able properly to perform the service proposed. What is the financial position of the railway with respect to this particular operation involved here?

A. There is no doubt about the financial ability of the Receivers to render this service. The Seaboard Air Line

Railway went into the hands of receivers on the 23d day of December, 1930. There has never been a time since that date when the railroad did not earn a sufficient amount of money to pay its operating expenses and taxes, and they have been met currently. Unfortunately, we have not been able to pay the interest on our bonded indebtedness. In 1936 the total railway operating revenue of the Receivers of the Seaboard Air Line Railway Company was $38,346,055.37, and the net railway operating income (that is after deducting tax accruals and operating expenses) was $2,920,582.99. That was not sufficient to pay the interest on the [fol. 539] bonded indebtedness of the railroad, but it was amply sufficient to operate the railroad and to pay its taxes.

Q. And in your opinion, I presume, there is no question about the financial ability of the Receivers to establish and efficiently operate the truck service here involved?

A. Absolutely not.

Q. Have you a copy of the annual report of the Seaboard with you?

A. I have it in my hand here.

Mr. Abeles: If the Board please, we should like to offer in evidence a copy of the Annual Report of the Seaboard Air Line Railway and its Receivers for the fiscal year ended December 31, 1936.

I have one extra copy of this which I shall be glad to turn over to Mr. Watkins, and if other copies are desired I can readily furnish them at a later date.

The Chairman: It will be marked Exhibit No. 1.

Without objection, Exhibit No. 1 is received in evidence.

(Exhibit 1, Witness Stanley, received in evidence.)

By Mr. Abeles:

Q. Now, Mr. Stanley, as the official largely responsible for the policy of the railway with respect to motor-carrier operations, can you tell us whether the Seaboard is now operating truck service auxiliary to its rail transportation over other parts of the system and, if so, where and to [fol. 540] what extent?

A. Yes. The first service that was established by us and which is now in operation is between Monroe and Hamlet, North Carolina, a distance of approximately 54

miles. I do not know the exact date that that service was inaugurated, but it was about five years ago.

Q. It was in 1931, was it not?

A. 1931, as I recall it; I am not positive as to the exact date. The next service, in chronological order, was between Drifton and Monticello, Florida, a distance of about four miles, paralleling a branch-line railroad that we have between those two points. On January 1, 1935, we established a truck service between Morriston and Waldo, Florida, a distance of approximately 50 miles, and on the same date one between Tampa and Brooksville, Florida, a distance of about 55 miles. Subsequently we established a service first between Jacksonville and Wildwood, Florida, and afterwards extended that from Wildwood to Tampa, Florida, a distance of 212 miles. We also have a service between Fernandina and Yulee, Florida, a distance of 12 miles. We have another, as I recall it, which was established early in the year 1935 between Rhine and Lyons, Georgia, a distance of 58 miles. Those, I think, cover our operations, a total, if I have made no mistake, of 445 miles of truck operations, all of which are confined physically [fol. 541] to the limits of some particular state.

Q. And involving experience in truck operations of between six and two years. Is that correct?

A. Yes, sir—well, running from two up to approximately six. I think it was about five years ago that the Monroe-Hamlet service was put on.

Q. So the Seaboard management has had extensive experience in truck operation in Florida and elsewhere?

A. Yes, sir. I think I might say there this, on the question with respect to abandonment of trains. During all that time the Seaboard has never substituted a truck service for a train service; and, as a matter of fact, since the truck was inaugurated between Morriston and Waldo, Florida, we have put on one additional train in that territory. That was since January 1, 1935.

Q. Your conclusion from that is that the establishment of this auxiliary truck service has no tendency to reduce or eliminate our train-service operations?

A. Absolutely not.

Q. Have these truck operations fulfilled the function for which they were intended?

A. Yes, they have given an expedited movement of LCL freight.

Q. Has it been your experience that in any case in which those truck operations have been established they have [fol. 542] tended to drive out of business competitive truck service in any way?

A. I can perhaps illustrate that by giving the Board some figures which I have recently developed in the state of Florida. It has not put a single truck line out of operation, and those that were operating in the territory where we established our service have had a material increase in their earnings, as shown by the reports of the Florida Commission, since we established our service. In other words, in 1930 the earnings of the common-carrier truck lines in Florida for their entire line, some of them operating up into Georgia, were $1,100,000, in round figures. In 1935, the last year for which any data are available from the Railroad Commission's report, the earnings were $2,008,000; while during the same period the freight earnings of all the railroads in Florida decreased 33 per cent.

Q. Mr. Stanley, Mr. Rogers this morning stated that it will be impossible to estimate the earnings which would accrue to the truck line involved in this proceeding because of lack of experience with this particular operation. From your experience with operations in Florida and elsewhere, can you state to the Board whether you consider that the inauguration of services of this character by the railway is economically justified and, if so, why?

A. Yes. It is economically justified, and before I make [fol. 543] that statement I should like to make this observation—that we consider the earnings on these truck lines as a part of the earnings of the railroad. To all intents and purposes, from every practical viewpoint it is a railroad operation; it is not a truck operation. We have not attempted to segregate those earnings for the reason that if we did so it will involve the necessity of keeping two sets of accounts, which would be very expensive. But from an economical standpoint we have gotten results by expediting the movement of our LCL freight and have given those people who want to deal with us—and there are quite a few of those—the best possible service which the railroad could furnish through the co-ordination of rail and truck service.

Q. Have we ever abandoned a truck service once established?

A. I do not recall any. I think we did at one time in North Carolina have authority to operate a truck to handle mail between Norlina and Hamlet, when our train service was rather meagre. The Commission itself will remember. If I am not mistaken that has been abandoned, but that was a specific service.

Q. But so far as the service of carrying general commodities is concerned, every one that was started is still in operation?

A. Every one that I recall.

Q. And we have had sufficient experience with the major-
[fol. 544] ity of them now to have measured accurately their value to the railroad and to determine whether they were justified, in our judgment, have we not?

A. Not only that, but also to measure their value to the public.

Q. Is there anything further you wish to say, Mr. Stanley?

A. I do not recall anything, although I could probably say a great deal.

Cross-examination.

By Mr. Watkins:

Q. Mr. Stanley, it is now the general policy of your railroad to parallel all of your rail lines with truck service?

A. It is not. Our policy, Mr. Watkins, is first to confine ourselves to the highways that are nearest to our railroad and which connect the communities served by our railroads and only to serve those communities which are served by our lines. Our second policy is to study each individual station on the railroad and from the facts developed to determine whether or not we feel that it would be economical and in the public interest to establish truck lines in those territories, but we have never contemplated the paralleling of our railroad in its entirety by truck lines.

Q. Take the states of Virginia, North Carolina, and South Carolina, Mr. Stanley, and your applications that are now on file. You pretty generally parallel all of your rail serv-
[fol. 545] ice in those three states?

A. No. In Virginia we would parallel it from Richmond to the Virginia-North Carolina state line, but we do not parallel the line that runs from Norlina to Portsmouth. In North Carolina, with a few exceptions most of it would be paralleled. In South Carolina there would be much

of it—quite a considerable lot of it—that would not be paralleled by truck service.

Mr. Self: Would it be paralleled northward from Hamlet?

The Witness: Yes, from Hamlet to Richmond, if these applications for certificates are granted. In South Carolina the line from Sumter to Charleston would have no truck service. Some of the branch lines in that territory would have none.

By Mr. Watkins:

Q. In Georgia the Seaboard Air Line Railroad proposed and tried to pass through the legislature a bill authorizing railroads to parallel their entire system with motor-truck operations, did it not?

A. No, sir; that is not putting it exactly as it is. The Seaboard Air Line Railway and other railroads tried to pass a bill which would authorize the Public Service Commission, upon application of a railroad for a specific service covering its rail stations, to operate trucks between such points as it might apply for authority, without proof [fol. 546] of public convenience and necessity.

Q. In other words, it took from the Public Service Commission its discretion and left the discretion of where such service would be inaugurated with the rail carrier.

A. It rather, Mr. Watkins, proceeded upon this presumption—that the railroads were the first of all common carriers and that the independent carriers which were on the highways under the original motor-vehicle act of Georgia had been permitted to operate without proof of public convenience and necessity and that therefore the oldest transportation facility of the state should be given the same privilege. That was the theory of the bill.

Q. And the Seaboard Air Line has opposed practically every truck operator's application for a certificate before the Georgia Commission?

A. I would not say practically every one; we have opposed quite a few.

Q. And you have opposed them generally throughout the entire Southern territory?

A. In quite a few places; in some places we have not. The fact is, Mr. Watkins, that most of them were there under the grandfather clause already.

Q. It is true, is it not, that you were the only witness before the Senate committee that represented the railroads asking for that bill to be passed?

[fol. 547] Mr. Abeles: I object to that question. I have no objection to Mr. Stanley's answering it, but I should like to keep out of this record wholly irrelevant matter.

Mr. Watkins: I am asking the question to develop the policy of the Seaboard Air Line Railway.

Mr. Abeles: I think the policy of the railroad has already been fully covered, and Mr. Stanley's activities before the Georgia or any other legislature has no bearing on this case, so far as I can see it.

The Chairman: Mr. Watkins, I am going to sustain Mr. Abeles' objection, because I see no relevancy.

Mr. Watkins: May I note an exception, please?

The Chairman: Yes, sir.

By Mr. Watkins:

Q. There was a similar bill before the Florida legislature this last session, was there not?

A. And passed.

Q. And passed. You operate in what states besides Virginia, North and South Carolina, Georgia, and Florida?

A. Alabama.

Mr. Abeles: You mean by rail, don't you?

Mr. Watkins: By rail.

By Mr. Watkins:

Q. I believe in describing your motor-carrier operations you did not give us the date of the institution of the service between Jacksonville and Wildwood?

A. Those services were established between Jackson-[fol. 548] ville and Wildwood sometime, as I recall it, about the middle of the year 1935.

Q. Prior to June first?

A. I could not tell you exactly.

Q. How about Fernandina and Yulee?

A. Sometime in 1935.

Q. You do not know whether they were established prior to June 1, 1935?

A. I have not that data.

Q. Do you know whether or not they are covered by applications pending with the Interstate Commerce Commission?

A. I think they have been registered with the Interstate Commerce Commission.

Q. Are you handling interstate freight over those lines at the present time?

A. Yes, sir. That is, freight that originates and moves by rail into Florida and then may be handled in Florida solely by these trucks.

Q. But interstate freight that is moving into Florida at this time?

A. Yes, sir.

Q. I believe the figures you gave on the earnings of motor carriers and rail carriers were for 1935?

A. 1930 w[illegible]935.

Q. I believe, of the six operations you have, five of them [fol. 549] were started after January 1, 1935?

A. Yes, but I also said in my testimony that the earnings of the independent truck operators competing with us in the territory where we established these operations January 1, 1935, had increased since the inauguration of our service.

Q. I did not understand it that way.

Q. I am very glad you asked me that, because I can bring it out. The figures for all of the truck lines in Florida as a whole were not available subsequent to the year 1935; but individual reports for the year 1936, as well as for the year 1935, of those lines that were in competition with us, were available; and from those reports filed with the Florida Railroad Commission I got my data.

Q. And the rail business increased, too?

A. No, sir, the rail business during that period up through 1935 had decreased 33 per cent.

Q. But beginning with 1935?

A. Beginning with '35, both by rail and truck there has been a slight increase. Beginning with '30, there has been a decrease in the rail revenue and an increase in the truck revenue.

Q. I believe you stated it is the policy of the Seaboard Air Line Railway not to abandon any rail service where this motor service is inaugurated?

A. We have not abandoned any, so far as I know.

[fol. 550] Q. You will still run freight trains, then, on this branch line from Cheraw out to Pageland?

A. Yes. We have one round trip or service there, which represents a minimum; and that train would have to be run if we expect to handle any passengers, mail, or express, or carload business.

Q. So your freight-train service between Cheraw and Pageland will be maintained even though this permit to operate trucks between those two towns is obtained?

A. For the reason that we do not nor could we economically handle carload business by truck, and the train has got to be maintained to handle that.

Q. Then the result will be that, in order to maintain service between Cheraw and Pageland you will be running a train out there and also running a truck out there if this application is granted?

A. That is true, certainly.

Q. There will be somewhat of a duplication along that line?

A. No, it will not be a duplication, because the train is going to handle almost exclusively carload business, and the truck is going to handle less-than-carload business and very much more promptly than it can at present be handled by the train.

Q. But you are going to have to have the expense of the rail operation as well as the expense of the truck operation [fol. 551] on that line—is that true?

A. Yes.

Q. You will have both if this application is granted?

A. Yes.

Q. Today you have only one?

A. Today we have the expense of the train in that territory, but that truck does not operate solely between Cheraw and Pageland but operates between Hamlet and Columbia.

Q. That is true. And that same situation would be true as to your branch line between McBee and Jefferson?

A. In both instances the trains to which you refer are mixed trains, that handle passengers, mail, and express, as well as freight. Of course, we can not handle passengers on a freight truck.

Q. So in paralleling those two branch lines, where you now maintain a service by rail only, you will have two services, one by rail and one by truck?

A. So far as the freight is concerned, yes; but the freight train will be practically relieved of the handling of all LCL freight; and as a result of that the movement of carload, freight, which it will continue to handle, will be expedited.

Q. I believe you said that neither of those branch lines had ever been able to pay its operating costs?

A. I think I said there are very few years within my recollection in which they had paid them.

[fol. 552] Q. Does the charter of the Seaboard Air Line Railway give you permission to operate trucks?

Mr. Abeles: I object to that. It has been held by the Commission time and again and by the Supreme Court that it is not the function of the Commission to inquire into the charter. I refer you to the Claiborne and Annapolis Ferry case, which was decided about 1931 in a proceeding under Section 1(18) of the Interstate Commerce Commission Act involving the Commission's authority under that section to establish an extension of a line of railroad.

Mr. Watkins: I want to refer the Joint Board's attention to the Pennsylvania Truck line case, just decided by the Commission, where the Commission criticised the railroad for establishing a subsidiary company to operate truck lines where it had authority under its own charter.

Mr. Abeles: No, I take exception to that statement of the Pennsylvania Truck Lines case by Mr. Watkins. The Commission in that case simply held that it would not approve of the intervention of a holding company between the Pennsylvania Railroad and the operating truck line which it was seeking to acquire. The Commission did not in that case assume the power to inquire into or pass upon the charter right of the railroad company. That question arose at the instance of counsel for the applicants, Pennsylvania Truck Lines, through his explanation of the reason [fol. 553] why the holding-company device was employed there, explaining that counsel for the Pennsylvania was in some doubt as to the charter power of the railroad to operate truck lines.

Mr. Self: This is off the record.

(Discussion followed, outside the record.)

Chairman Darby: On the record.

Exam. McCaslin: The Examiner might interpose on the record at this time the statement that a copy of the charter has been filed with the application as an exhibit, and possibly the Commission will find it necessary itself to determine whether it is within the authority of the charter to operate trucks.

The Chairman: I will sustain the objection, Mr. Watkins.

By Mr. Watkins:

Q. Did you get any authority from the court wherein this receivership is pending to file this application?

A. I recall no specific order in this case, but there is a general order entered by the court instructing the Receivers to do whatever may be necessary, in their opinion, to operate and conserve the property. In my opinion, that is broad enough to cover this situation.

Mr. Watkins: That is all, I think.

The Chairman: Any further questions?

Mr. Abeles: Is there anything further you would like to say, Mr. Stanley?

The Witness: I have no desire to say anything further.

[fol. 554] The Chairman: The witness is excused.

Mr. Abeles: That is all we have, gentlemen.

The Chairman: Mr. Watkins, how many witnesses have you?

Mr. Watkins: I had four this morning, but some of them have left.

The Chairman: We could not possibly get through this case this afternoon?

Mr. Watkins: No, sir.

Chairman Darby: We will adjourn, then, until nine o'clock tomorrow morning.

Whereupon adjournment was taken, at five o'clock p. m., until nine a. m. Saturday, June 12, 1937.

Saturday, June 12, 1937, 9 a. m.

Chairman Darby: The hearing will come to order.

Exam. McCaslin: Off the record.

(Discussion between the Examiner and counsel, outside the record.)

The Chairman: We will proceed, gentlemen.

Mr. Abeles: If the Board please, counsel for the protestants has just exhibited to me a copy of a communication which he has transmitted to the Bureau of Motor Carriers of the Interstate Commerce Commission, in Washington, formally submitting a motion which he filed with the [fol. 555] Board yesterday maintaining that this proceeding has been improperly assigned to a joint board. In that motion, as transmitted to the Bureau, he makes the following statement: "That the several applications have been improperly and arbitrarily separated and divided in order to confuse the issue." That, of course, is a statement to which we take the most vigorous exception; and in order to clear the record I should like to recall Mr. Stanley for just a brief statement explaining the reason why these applications were separately filed.

Chairman Darby: All right, sir.

W. L. Stanley was recalled and testified further as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Stanley, you heard my preliminary statement. Will you explain to the Board why we filed these applications separately rather than together?

A. The filing of the applications separately was because of the operation of train service in the various territories that are covered by the applications, our purpose being to co-ordinate in each operating territory the train and truck service. Speaking of the three applications that are before this Board, one is exclusively on the North Carolina Division of our railroad. That is the one from Hamlet to Columbia. It includes two subsidiary lines of the Sea- [fol. 556] board—the C. & L. and the C., M. & C. Another application is exclusively on the South Carolina Division of the railroad. (I refer to the one from McBee to Sumter.) And the third is exclusively on the South Carolina Division of the railroad, being the one between Gaston and Garnett. Now, in each of those territories—from Hamlet to Columbia, from McBee to Sumter, and from Gaston to Garnett—you have what I might call a subdivision of

the railroad so far as the operation is concerned. You have not any through train service, to illustrate, from Hamlet, North Carolina, to Sumter, South Carolina. You have not any through train service from Hamlet, North Carolina, to Garnett, South Carolina. The primary purpose in filing these applications as they were filed was in order to co-ordinate the proposed truck operation with the movement of the trains in the territory where we sought authority to operate the trucks.

Q. And there was no intention, as stated in the motion of counsel for the protestants, to confuse the issues or to conceal our purpose or intent?

A. Absolutely no. In my opinion there would have been more confusion had we sought to get this authority in one application.

Q. Because it would not have disclosed exactly the kind of operation we propose?

A. No, sir.

[fol. 557] Cross-examination.

By Mr. Watkins:

Q. Mr. Stanley, are you willing for these applications to be limited so as to prevent the interchange of traffic moving under the various applications from one truck service to another?

Mr. Abeles: I have already answered that question several times, Mr. Watkins. I have no objection to the witness' answering it again.

A. I am not willing that that be done, because, as has been testified by another witness, there may be occasion where, for the purpose of expediting freight, it would be desirable to transfer a shipment from one truck to another, although that would be the exception rather than the rule.

Mr. Self: I think his question there would include also whether or not you intend to run trucks from one of these proposed sections affected by one application to another section.

The Witness: We do not intend to run trucks from one section into another section. The only possible thing that we might do would be occasionally to transfer from one truck in one section to another truck in another section.

Mr. Self: You would not run a truck from Richmond, Virginia, to Columbia, South Carolina?

The Witness: No, sir; that is not contemplated.

[fol. 558] By Mr. Watkins:

Q. Would you be willing for your applications to be so limited as to preclude that?

A. I think the applications themselves already are limited.

Q. Would you be willing for the Commission to so construe your application?

A. My own opinion about the matter, Mr. Watkins, is this: that when we get authority to operate a truck from Hamlet to Columbia, for instance, that operation, under the certificate that may be granted, would be limited to that territory; and in like manner the operation of the truck from McBee to Sumter would be so limited.

Q. And are you desirous of the application being limited in that way?

A. I think they would limit themselves. A certificate granted from Hamlet to Columbia is going to cover the operation of a truck from Hamlet to Columbia, as I see it. I do not think we would have any right, for instance, to operate a truck from Hamlet to Sumter, South Carolina—the same truck. I might add, if you will pardon me, Mr. Commissioner, we have no intention of doing so.

The Chairman: In case you were running your truck from Columbia to Hamlet and when you arrived in Hamlet with your truck you found that the truck going from Hamlet to other points had broken down, what would be your attitude toward running the same truck on?

[fol. 559] The Witness: I think under this arrangement we would have a relief truck there. That is what we propose to do. I can conceive, Mr. Commissioner, of an extreme case where we might take that truck and operate it into other territory, but as a rule that would not be done.

The Chairman: I am like you; I think the application itself limits the truck as to where it can operate.

Mr. Abeles: I might interject at that point it seems to me that so far as any interest that the protestants might have in these proceedings it would be a matter of no concern to them whether we operate the truck over more than

one of the routes or operate separate trucks. If, for example, in the instance that you have cited we found in an emergency that it would be necessary to use the Columbia-Hamlet truck for the Hamlet-Wilmington service, what concern is it of the protestants if we run that truck through rather than use another truck? It is the service itself, it seems to me, in which they are interested and not the equipment which is used.

The Witness: I may add this, if I be permitted, that we have planned, subject, of course, to favorable action by the Commission, to purchase separate and independent trucks for each of these routes.

Exam. McCaslin: Mr. Stanley, you are the officer of the corporation who prepared and signed some eight applica- [fol. 560] tions that the Seaboard now has pending?

The Witness: I am.

Exam. McCaslin: Are the schedules, in so far as the connections and the termini of the various routes applied for, so arranged that the trucks running on the different sections will connect rather closely?

The Witness: Such a purpose in the preparation of those schedules, Mr. Examiner, was not in our minds at all when the applications were filed. Whether or not it would be possible, under these various schedules, to make that connection I do not know and could not know unless I examined those schedules.

The Examiner: I had in mind this sort of situation. Suppose a shipment which would ordinarily be carried by truck rather than by train, originating at some point between Columbia and Hamlet, were destined to a point between Hamlet and Raleigh, which would also be the sort of less-carload traffic which you contemplate moving by truck as to both destination and origin point, would the schedules permit of the shipment's arriving in Hamlet (which is the transfer point or the terminal point of each of those proposed routes) at such a time that it could be expeditiously transferred from the Hamlet-Columbia truck to the Hamlet Raleigh truck?

The Witness: Without having those schedules in my [fol. 561] mind (I would have to check up on those), I would say this: Assuming you get a shipment at Bethune, South Carolina, which is a local station between Hamlet and Columbia, going to Cameron, North Carolina, which

is a local station between Hamlet and Raleigh, now I should say that in that instance, regardless of the schedule, that shipment would be handled by truck from Bethune to Hamlet and then by truck from Hamlet to Cameron.

Exam. McCaslin: That is what I wanted to know.

The Witness (Continuing:) Because we have no train service in either of those territories, and even if it had to stay at Hamlet for ten hours I think the movement would be made that way.

Exam. McCaslin: That is all.

Mr. Abeles: That would not be for the purpose, I take it, of substituting truck service for rail service but because that is the kind of shipment which adapts itself to the purpose for which we are establishing this truck service—is that correct?

The Witness: That is absolutely correct, and I took those two small places because we are assuming that there will be no cars picked up or set off at either of those points, and the service we shall have will be truck service.

Chairman Darby: We have gotten to the point where we are hearing another bunch of applications. Let's confine [fol. 562] our hearing here entirely to the application that is before us—from Columbia to Hamlet.

I shall ask Mr. Self to make a statement with reference to Mr. Watkins' motion filed yesterday.

Mr. Self: With reference to Mr. Watkins' motion filed yesterday referring to the consolidation of this and other cases pending before the Interstate Commerce Commission that have been referred to other boards, this Board is No. 177, and we must deny the motion made for the reason that the other cases are not before us. We can not consolidate them. Therefore we will proceed to take the evidence in the case before us and let the folks in Washington consider your motion there, to consolidate; and we will refer to it in any order we issue in this case.

Mr. Watkins: May I make this motion, Mr. Commissioner?

Mr. Self: Yes, sir.

Mr. Watkins: I make a motion that this hearing be adjourned until the Commission has had opportunity to pass upon our motion to consolidate.

Chairman Darby: Mr. Watkins, I am going to deny that motion, upon the grounds that the Board has orders to

hear this case for the Interstate Commerce Commission. I think the Commission, before they ordered the Board to hear this case, knew what they were talking about. I [fol. 563] think they threshed it out thoroughly before they gave the order. If the Commission see fit to hear the entire group of applications at one time, they can do so. The Commission have gone to the expense of ordering this hearing, and they have people here. We are going to continue to take the testimony, and if they see fit to deny your motion they will still have the testimony before them.

I wish to say here, let's confine ourselves to testimony on this application that is before us. We will take care of the other hearings when they come before the Board, and let's confine our remarks solely to the application that is now before us, and not interject testimony about the operation in Virginia, for instance. I did not even know they had an operation or an application for operation pending in Virginia until it was brought out here. We have gotten into a wrangle here and have been talking about the operation from Sumter to McBee and from Hamlet to Raleigh, and even from Gaston to Garnett. Let's confine ourselves to testimony on this one proposed application that is now before us.

Mr. Watkins: May I enter my objection to the decision of the Board on all three points: That is, the denial of the motion to consolidate, the motion to adjourn, and the ruling that we must confine our testimony to the application before the Board at the present time?

[fol. 564] The Chairman: Note his objections there.

Mr. N. A. Turner: May I say something off the record?

The Chairman: Off the record.

(Mr. Turner made a statement which was followed by a general discussion, all outside the record.)

Chairman Darby: On the record.

Mr. Watkins: In view of the three rulings of the Joint Board, to which exceptions have been noted, the interveners represented by me do not desire to put in any testimony at this time but insist upon consolidation, and if the cases are consolidated they will put in testimony at that time.

Mr. Darby: Have you anything to say on that, Mr. Abeles?

Mr. Abeles: I should like, in response to that statement of the intervener, to request the Board to insist upon the

interveners' proceeding with such evidence as they may have with respect to this particular proceeding at this time, for the reason that I stated yesterday, that if the Commission should decide that the motion for consolidation be overruled, it will then have before it the entire record. In the alternative, if counsel for the interveners refuses to proceed, I request that the record be considered closed and that no further opportunity for the submission of evidence by the intervener be granted. In other words, if the Board please, I have had similar experience in other cases where [fol. 565] questions regarding the procedure have arisen in the course of the hearing; and invariably the ruling of the examiner or the board, as the case may have been, has been that the evidence be taken and that the Commission will rule upon the procedural question when the matter comes before it. If the intervener is permitted at this time to hold in abeyance his evidence, pending the ruling of the Commission on the motion, then we shall be put to the inconvenience and expense of having our witnesses present at the time and place when he does put in his evidence.

The Chairman: Gentlemen, I think the only thing to do is to proceed with the case. If Mr. Watkins has no witnesses to put on, and the Commission sees fit to deny his motion, why then the case is closed. They have had their day, and the case is closed on the evidence that is in it. The Board, of course, is not going to insist that he put in evidence, but if the Commission should rule against him on the motion then the only evidence will be that put in by the applicant.

Exam. McCaslin: I believe Mr. Callahan wishes to make a statement.

Mr. Abeles: When I asked that the case be closed I meant, of course, Mr. Watkins' case.

Chairman Darby: Mr. Callahan, we will hear from you at this time, if you will be sworn now.

[fol. 566] WILLIAM T. CALLAHAN was sworn and testified as follows:

The Witness: My name is William T. Callahan, and I live in Charleston, South Carolina. I am a representative of the Brotherhood of Railway Trainmen.

Mr. Commissioner, our position in this matter is that we have fought motor-truck and motor-bus transportation up and down the highways of South Carolina for about nine years; and, to get the record straight, we can not fight the independent carriers and smile upon the Seaboard's putting in station-to-station service. The local freights operate, and I believe the service—I am speaking from a record—I believe it is the practice of railroad companies to load trap cars. When you take and put these motor carriers on the highways you are taking away from the railroad employment to the extent of overtime. That is the situation, and that is the only protest we are offering. We don't know where we stand on the situation, and we don't know what type of employees will be hired to operate these motor carriers on the highways. In other words; there are four branches of the service—I am speaking for one; there are four branches of the service, and there is no question in my mind but some of the service is going to be curtailed, so far as the operation of local freight trains is concerned. Another thing that we want to get [fol. 567] straight in the record is it don't seem plausible to us, when you have got a local freight line operating on the highways and pay a man $110 a month, that when it comes to curtailing the service they are not going to operate right on the highways and cut off the local freight, because an engineer makes on a local freight—an engineer on a round trip would make around $14, the fireman make around $12, the conductor make around $12, and you would have two brakemen—you have five men in that outfit that would make over $100 on a round trip; and it don't seem to us that where you have a truck operating on a highway for $110 a month you would keep those men on.

I have got this information—that the Seaboard's policy has been to give the furloughed employees the preference of these runs. Is that correct?

Mr. Abeles: I can not speak authoritatively, but I have the same information.

The Witness: I have that information, and all I have to say is that we are protesting this service on the basis that it is going to curtail rail employees' employment.

Mr. Self: Do you think it would save railroad all its overtime paid to employees in that territory?

The Witness: Well, if they operate the local freights in switching only and through freight, in these communities

where they have switching service, naturally this service on the highways is going to eliminate the local man from [fol. 568] making his overtime. That is the only protest we enter against it.

The Chairman: Any questions, gentlemen?

The Witness: In other words, Mr. Commissioner, we are in a position where we don't know where we stand on the whole issue, because if the Seaboard puts in this plan, gentlemen, the other trunk lines in the state will do likewise; and we are not altogether satisfied with the whole move on the basis that it is going to curtail our train-service employees to an extent that they are going to suffer in the long run. Of course, it is a happy thought to them that they are going to give the train-service employees the positions on these trucks, but there is a big difference in $110 a month and what the usual salary of a train-service employee is.

That is the only basis on which we are making the protest.

Cross-examination.

By Mr. Abeles:

Q. Mr. Callahan, you are the representative of the Brotherhood of Railway Trainmen, are you not?

A. That is correct.

Q. At Charleston.

A. Yes, sir. We have 640 men in the state involved in train service.

Q. The particular operation involved in this proceeding would affect the employees only on the North Carolina [fol. 569] Division?

A. Well, your policy, I believe, is generally to parallel the lines.

Q. Yes, sir, but let's confine ourselves to this case, if we may, for the present.

A. Well, we can not confine ourselves to the case, because after you have established a precedent——

Q. I understand what your general attitude is, and I think you have stated it very clearly; but, so far as this particular proposed service is concerned, it would affect the trainmen on the North Carolina Division only, would it not.

A. You propose in this line from Hamlet to Columbia—that is an interstate movement?

Q. Yes.

A. I am not familiar with the Seaboard set-up, but I guess that is one of their main lines.

Q. Yes, that is one of the main lines.

A. Well, I don't know what service you have got up there, but certainly it would affect your local freight service between Hamlet and Columbia.

Q. That is on the North Carolina Division; I state that to you, if you do not know. Have any of the Seaboard employees on the North Carolina Division expressed themselves to you in opposition to this proposal?

A. No, because North Carolina is out of my jurisdiction. [fol. 570] You can not confine your argument to North Carolina——

Q. I am not arguing now; I am simply asking certain questions. I do not want to foreclose you, but I do want to keep the record straight.

A. I do believe that the employees of North Carolina, when you meet in Raleigh, you will find the same opposition that you meet here in Columbia.

Q. That is pure surmise. I want to get some specific answers to specific questions.

A. I am confident you will find the same opposition.

Q. That is pure surmise; we have not reached that case yet.

A. You are talking beyond this——

Q. Just a moment. You are familiar, I suppose, with the fact that on railroads generally, and on the Seaboard specifically, local train service has been very sharply curtailed during the past few years, are you not?

A. I disagree with you on that, for the simple fact that the local freights that were operating triweekly on any trunk line in South Carolina are operating on a daily basis today.

Q. But there has been a great deal of local freight service which used to be carried by the railroads that is not carried by them today—isn't that correct? (I should make that clear, that I am speaking of the amount of less-carload traffic carried by the railroads rather than carloads.) [fol. 571] A. Well, the amount of less-carload traffic on the trunk lines today is curtailed to the extent that the local motor lines have taken that business.

Q. All right. Speaking for your organization, I am not entirely clear why—granting that the railroad will employ

furloughed employees for the additional service such as we are here proposing—you are opposing the proposal, which, under the assumption that I make, will give employment to a larger number of ex-railroad employees. I say, assuming that to be the case, I am not clear why you are opposing that result.

A. Well, we are opposing the situation on this basis; when you hire a man to drive a truck for $110 a month you are not taking care of the situation. In the first place, this $110 man has no status whatever with regard to a contract—is that correct?

Q. I can not answer that question, but let's assume that to be the case.

A. Well, if he were a trainman he would be paid standard wages or prevailing wages for local freight.

Mr. Self: How much would that be a month?

The Witness: Well, I would judge, offhand, and at a rough estimate, that a man in local freight service—a brakeman, for instance—would make better than $200 a month.

[fol. 572] Mr. Self: How many of your 640 members of your Union have not been called for a long period, say within sixty or ninety days?

The Witness: Well, I would imagine—I am not in position to say who has been called to operate these trucks, because I have not got the available information.

Mr. Self: I mean on the railroad; how many are out of employment?

The Witness: Well, at the present time I am happy to say that very few of our fellows are out of employment. On account of the truck movement and the fertilizer movement and the general pick-up in business conditions, very few of our fellows are out of service.

By Mr. Abeles:

Q. Let me put it this way, Mr. Callahan. If this application is denied, and you are appearing here in the effort to have it denied, I take it, will it mean the employment of any additional trainmen by the railroad?

A. No, because it would mean additional employment on this basis. A local freight——

Q. I am just asking you whether it would mean the employment of any additional emlpoyees.

A. Well, it will have this effect——

Q. I don't want to interrupt you, but I do want an answer.

A. It would not have any additional employment, but it would have the effect of curtailing overtime.

[fol. 573] Q. Then, Mr. Callahan, is it a fair statement of the position which you are here urging before the Board to say that, in order to save the additional compensation which the members of your organization would earn through overtime, you would be willing to prevent the employment of the additional men that would be required for the operation of this truck service if the application is granted, thus spreading employment?

A. Well, I am going to ask you this question——

Q. No, I don't want you to ask me questions; I am not on the witness stand. I am asking you to answer my question. Just a moment; did you understand the question?

A. Yes, sir.

Q. I ask you to answer it.

A. I will say this—the type of employment that you are going to put in the service, we are absolutely against it.

Q. Even though it provides employment for ex-service men?

A. Yes, sir.

Q. Mr. Callahan, you are familiar, of course, with the terms of employment of the members of your organization, are you not?

A. I hope so.

Q. Will you describe to the Board on what basis they are employed, with respect to hours of service and pay, in local freight service?

[fol. 574] A. I would not be in position to say that offhand, because I haven't got the schedules with me, but a man on local freight service works on a mileage basis.

Q. What is that basis?

A. Well, I think the local freight rates are about $5.36 per hundred miles.

Q. Express it in terms of miles and hours, if you can, for a day's work. Do you know what the basic pay is?

A. A local freight man gets $5.36 for 100 miles.

Q. Within how many hours?

A. Within eight hours. If his run runs over eight hours, why naturally he gets time-and-a-half overtime.

Q. And if his run exceeds 100 miles he gets what?

A. He gets additional mileage. I haven't got the schedule with me, and I am not prepared to make a statement on that basis.

Q. Suppose he runs only 75 miles?

A. Well, he gets paid for his hundred miles.

Q. An entire day's wages?

A. That is right.

Q. Is there any guaranty as to the number of days per month for which he shall be paid?

A. No. The average local freight man runs about 25-½ days per month.

Q. Is he guaranteed that?

[fol. 575] A. Well, you know there is a mileage limitation. I am speaking for one branch of the service, now; I am speaking for the trainmen.

Q. That is all I am asking you to speak for.

A. The engineers have got a mileage basis.

Q. Speaking of the trainmen.

A. They work 25-½ days a month.

Q. And if they actually work less than that, they get paid for 25-½ days?

A. Yes, if they are in the service they get paid for it.

Q. So if they are in the service they are secure of the payment of a definite amount for any one month, are they not?

A. Well, absolutely, yes.

Q. Then, simply to summarize what you have said, Mr. Callahan, it is your position that if, by the establishment of the auxiliary truck service which we are here proposing, the trainmen are deprived of the overtime which they might otherwise earn you are opposed to the proposal?

A. I am not opposed to it on an overtime basis, but the situation involved is this; you will want to curtail train service, when the situation arises; you will annul a train if you have provisions for highway transportation. You are going to keep the truck service in operation.

Q. If we do not eliminate any train-service as the result [fol. 576] of the establishment of this motor-carrier service, would you be opposed to the application?

A. Provided we had the assurance that you would not curtail train service in preference to motor-truck transportation, no, we would not oppose it.

Q. I am trying to get your position clear. At the outset of your testimony you stated that the basic ground for your opposition was the fact that the earning of overtime by local trainmen was threatened?

A. That is correct.

Q. Now you say that your opposition is based upon the possibility of the elimination of trains?

A. That is correct.

Q. Now, which ground do you choose to stand on?

A. I stand on both of them.

Q. Are your trainmen in local freight service not guaranteed 25-½ days per month?

A. If a man stands for a run—I will answer you like this; if a man stands for a run—no trainman is assigned to a run. They bid on those jobs.

Q. All right.

A. If he is in service, and that run becomes open, he runs on that run. There is no guaranty of any specific number of days. The average local freight man, I believe, will average 25½ days a month. Is that clear now?

[fol. 577] Mr. Abeles: No, it is not clear to me, but we will let it go at that.

That is all, Mr. Callahan.

Chairman Darby: Is there anything further?

Mr. Abeles: May it please the Board, I should like to move that those parts of the application which are of an evidentiary character be considered a part of the record in this proceeding.

Off the record.

(Mr. Abeles made a statement off the record.)

The Chairman: On the record. Is there any objection?

Mr. Watkins: I see no objection.

The Chairman: Without objection, they will be so considered.

The applicants have rested?

Mr. Abeles: Yes, sir.

Chairman Darby: Do the protestants rest?

Mr. Watkins: Yes, sir.

The Chairman: No further evidence will be offered by anyone.

Do you desire to file briefs in this case?

Mr. Abeles: Mr. Chairman, I understand that this is a recommended report case. We prefer in such cases to [fol. 578] defer briefs until after the proposed report is considered. At that time, I understand, if we so desire we shall have opportunity to file exceptions and supporting brief?

The Chairman: That is correct.

Mr. Watkins: In behalf of the intervener, in consideration of the motion to consolidate it is quite probable that I shall wish to file a brief on legal points as to the right of this Board and other boards to consider these applications piecemeal. In view of the fact that they are now before boards and there is no general jurisdiction, it will probably be necessary to file brief in each case.

The Chairman: Do you wish to file brief in this case?

Mr. Watkins: Only on the legal points raised in my motion.

Mr. Abeles: In advance of the recommended report of the Board?

Mr. Watkins: Yes, sir.

Mr. Abeles: Mr. Chairman, in view of the statement by counsel for interveners, we, of course, desire to file a brief on that same question, understanding that it will not go to the merits of the case but to the procedural issue raised by the motion of counsel for intervener.

Mr. Watkins: To a certain extent, now, Mr. Abeles, this does go to the merits of the case. But I may say that [fol. 579] the purpose I have got in filing this brief is to try to stop this method of procedure. Now, naturally some of the evidence that has been taken here will be involved. To that extent it might go to the merits. I don't know.

Mr. Abeles: By my statement I meant that you will not direct your opening brief, or the brief which you might now file, to the question of public convenience and necessity. Is that correct?

Mr. Watkins: I can not even agree with that, because when you consider the fact that you have eight applications here which we think should be considered jointly the question of convenience and necessity might even creep into a brief on that subject.

Mr. Abeles: May I suggest this, Mr. Chairman? We have not, of course, the benefit of the formal motion filed

by Mr. Watkins with the Commission. I understand that he will furnish us with a copy of that?

The Chairman: And will again file it formally with the Commission, I understand, in addition to the telegraphic submission.

Mr. Watkins: Undoubtedly I will file it.

Mr. Abeles: And the brief which you will file will be directed to that motion, embracing, of course, such collateral matters as you may consider necessary for the argument on that motion?

[fols. 580-581] Mr. Watkins: That is true. Of course, you have to consider this point—that there are these other hearings pending.

Chairman Darby: The briefs will be filed simultaneously and must be in by July 12th.

If there is nothing further, the hearing is closed.

(Whereupon the hearing was closed, at 10:45 a. m., Saturday, June 12, 1937.)

[fol. 582] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC 86687 and Docket No. MC 86687, Sub. No. 1

Application of LEGH R. POWELL, JR., and HENRY W. ANDERSON, Receivers of Seaboard Air Line Railway

Columbia, South Carolina, June 11, 1937. 9 a. m.

Before Joint Board No. 177 (J. C. Darby, South Carolina Public Service Commission)

Also Present: Examiner W. W. McCaslin.

Met pursuant to notice.

APPEARANCES:

Chas. T. Abeles, 319 Seaboard Air Line Railway Building, Norfolk, Virginia, appearing for Applicants.

Edgar Watkins, Jr., Bona Allen Building, Atlanta, Georgia, appearing for Southern Motor Carriers' Rate Conference, Intervener.

N. A. Turner, Columbia, South Carolina, appearing for New South Express Lines, Intervener.

[fols. 583-584] Proceedings

Docket No. MC 86687

Friday, June 11, 1937, 9 a. m.

Chairman Darby: The Interstate Commerce Commission has set for hearing at this time and place Docket No. MC 86687, before Joint Board No. 177. This is the application of the Receivers of the Seaboard Air Line Railway for a certificate of public convenience and necessity (Form BMC 8, new operation) authorizing a new operation as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of South Carolina, between Gaston and Garnett, South Carolina.

This case will be taken up and proceeded with upon the conclusion of the hearing on Docket No. 86687, Sub. No. 3, which is being heard by Joint Board No. 2.

All persons interested in this case should remain here, in order that they may be ready to proceed at the conclusion of the other hearing.

(Whereupon, adjournment was taken until conclusion of the hearing on Docket No. 86687, Sub. No. 3.)

[fol. 585] Docket No. MC 86687—Sub. No. 1

(Friday, June 11, 1937. 9:05 a. m.)

Chairman Darby: The Interstate Commerce Commission has set for hearing before Joint Board No. 177, at this time and place, Docket No. 86687, Sub. No. 1, the application of the Receivers of the Seaboard Air Line Railway for a certificate of public convenience and necessity to extend its present operation, authorizing operation as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of South Carolina between McBee and Sumter, South Carolina.

This case will be proceeded with upon the conclusion of the hearing, set for this same time and place, of Docket No. 86687, Sub. No. 3, and Docket No. 86687.

All persons interested in this case should remain here or arrange to be here upon the conclusion of the two cases just announced.

(Whereupon, adjournment was taken until the conclusion of the hearing of Docket No. 86687, Sub. No. 3, and Docket No. 86687.)

[fol. 586] Docket No. MC 86687—Sub. No. 1

Friday, June 11, 1937, 3:30 p. m.

Chairman Darby: The Joint Board No. 177 finds that it will very obviously be impossible to hear the last Seaboard Air Line Railway case (that is, Docket No. MC 86687, Sub. No. 1) today, and that case is continued until tomorrow morning at this same place, at nine o'clock.

All witnesses and other interested parties are excused until that time.

(Whereupon, adjournment was taken until Saturday, June 12, 1937, at 9.00 o'clock a. m.)

[fol. 587] Docket No. MC 86687

Friday, June 11, 1937, 5 p. m.

Chairman Darby: The hearing on Docket No. MC 86687 is adjourned until tomorrow, when it will be taken up at the conclusion of the hearing on Docket No. 86687, Sub. No. 3.

All persons interested in this case may be excused until tomorrow. They should arrange to be present then at the conclusion of the hearing on the other docket.

(Whereupon, adjourned until Saturday, June 12, 1937, until the conclusion of hearing on Docket No. MC 86687, Sub. No. 3.)

[fol. 588] Docket No. MC 86687—Sub. No. 1

Saturday, June 12, 1937, 9.00 a. m.

Chairman Darby: The hearing on Docket No. MC 86687, Sub. No. 1, which was continued yesterday afternoon until nine o'clock this morning, will be held by Joint Board No. 177 at the conclusion of the hearing by Joint Board No. 2 on Docket No. 86687, Sub. No. 3, which hearing is now in progress.

All witnesses and other parties interested in Docket No. MC 86687, Sub. No. 1, are instructed to remain here in

order that they may be ready when this case is taken up later this morning.

(Whereupon, adjourned until the conclusion of the hearing on Docket No. MC 86687, Sub. No. 3, before Joint Board No. 2.)

[fol. 589] Docket Nos. MC 86687 and MC 86687, Sub. No. 1

Saturday, June 12, 1937, 11.00 a. m.

Chairman Darby: The interstate Commerce Commission has set for hearing at this time and place Docket No. 86687 and Docket No. 86687. Sub. No. 1, applications of the Receivers of the Seaboard Air Line Railway for certificates of public convenience and necessity authorizing operation as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of South Carolina, between Gaston and Garnett, South Carolina, and between McBee and Sumter, South Carolina. The two cases have been continued since yesterday until the conclusion of the case which Joint Board No. 2 has just heard. These two cases are both set for hearing before Joint Board No. 177. The issue of the fitness, willingness, and ability of the applicants in each case properly to perform the service is common to both cases. The issues of public convenience and necessity in each case, of course, are separate and must be considered separately, since they are, under the applications, two separate operations. The Board feels that considerable time can be saved for all the parties and expense to the parties and to the Interstate Commerce Commission by consolidating the two cases for hearing, by reason of the common issue of fitness, willingness, and ability.

Do counsel have any statement to make in regard to [fol. 590] the consolidation as proposed by the Board?

Mr. Abeles: Yes, Mr. Chairman. For the limited purpose, as just described by the Commissioner, and with the understanding that from the consolidation there will arise no implication that the two operations covered by the two applications have any connection whatsoever and that on the issue of public convenience and necessity they will be considered and decided separately, we agree to the Chairman's proposal.

I wish also to make this further statement in connection with Docket No. MC 86687, which is the proceeding covering the service from Gaston to Garnett. Some two weeks ago, on behalf of the applicants, I filed with the Commission an application on Form BMC 6, seeking the registration of this service; and to that application I appended a statement explaining to the Commission that we had theretofore filed our application on Form BMC 8 for a certificate covering this same route and that, notwithstanding the filing of the certificate application, we considered (for the reasons explained in the statement) that the applicants are entitled to registration and that under the provisions of the Federal Motor Carrier Act no certificate is required. I also requested that the application for registration be consolidated with, heard by (if hearing was necessary), and disposed of by the Commission at the same time as the [fol. 591] hearing upon the certificate application in this docket. I followed up that request with telegraphic communication with the Commission requesting that we be advised, if possible, of the Commission's action upon that request. Up to this time I have received no reply from the Commission, and accordingly I renew that request at this time.

Chairman Darby: The Board has instructions only to hear the applicants on Form BMC 8. That is the only information we have, so we will proceed on that.

Mr. Abeles: I presume our request will be acted upon by the Commission when a formal disposition is made of this case.

The Chairman: Who appears for the applicants?

Mr. Abeles: Charles T. Abeles for the applicants in both dockets.

The Chairman. Who appears for the interveners?

Mr. Watkins: Edgar Watkins, Jr., appears for the Southern Motor Carriers' Rate Conference; and N. A. Turner appears for the New South Express Lines, in both dockets.

The Chairman: Have you filed formal petition of intervention in these cases?

Mr. Watkins: Formal petition of intervention has been filed on behalf of the New South Express Lines, and I now file one on behalf of the Southern Motor Carriers' Rate Conference.

[fol. 592] Mr. Abeles: That covers both the cases?

Mr. Watkins: Yes, sir. I put them both on the same form.

The Chairman: Will you state your position on the record, Mr. Watkins:

Mr. Watkins: Yes, sir. I have not seen a copy of the application on BMC Form 6, for registration, referred to by counsel for applicant. I disagree, however, with his interpretation of the law that even though a certificate has been granted by the State of South Carolina it is unnecessary to proceed with the hearing before the Interstate Commerce Commission on the interstate features involved. The applicants have filed with the Commission applications under Dockets MC 86687 and Sub Numbers 1 through 7, forming eight separate applications, under which applications, apparently, by virtue of the testimony given by applicants in Docket 86687, Sub No. 3, heard by Joint Board No. 2 yesterday, the applicants intend to a certain extent to perform through truck service or through truck and rail service between all points covered by all applications. If Section 205b of the Motor Carrier Act is construed as covering operations by both rail and truck, these applications would involve operations in more than three states and should be heard by an examiner. If the Section 205b refers only to motor-carrier operations of a rail applicant, then the applications involve operations in three states—the states [fol. 593] of Virginia, North Carolina, and South Carolina —and under the law should be heard by a joint board composed of representatives from those three states. Thus I move that these cases be cancelled for hearing, as the hearing before this Joint Board is illegal, and that they be consolidated for hearing with the other cases under the sub numbers dockets and be heard n a legal manner.

I also urge, as grounds for this motion, the fact that the various joint boards before which these cases are set can not clearly understand the entire issue by trying the applications piecemeal and that in order for the Commission to be fully informed as to the effect of each of these applitions and of all of them as a whole such consolidation is necessary.

Mr. Abeles: Mr. Chairman, I should like to ask counsel for the interveners whether he will file a brief on that question in this proceeding. My purpose in asking that ques-

tion is that, if he proposes to do so, I see no purpose in stating my position fully at this time other than to say that we, of course, oppose the motion.

Mr. Watkins: It is the intention of the interveners to formally request the Commission to consolidate all the cases referred to, for hearing, and in support of such motion a brief will be filed. I presume that that would be [fol. 594] considered a brief in this case, as well as in the other cases involved.

Mr. Abeles: I presume that it would be unnecessary to file separate briefs (that is, physically separate briefs) in each proceeding on this specific point but that a brief can be addressed to the Commission as a brief in all of these cases?

Exam. McCaslin: Off the record.

(Short discussion, outside the record.)

Mr. Abeles: In view of counsel's explanation I will not at this time state our position on that motion except, as I say, that we oppose it, and I will reserve argument for the brief.

The Chairman: I take it that all persons appearing as counsel in this case have applied for admission to practice before the Commission or have been admitted to practice?

Mr. Abeles: I have been admitted.

Mr. Watkins: I have been admitted.

Mr. Turner: So have I.

Chairman Darby: No free copies of the transcript in this case will be distributed. Persons desiring copies will order them from the reporter.

Mr. Abeles: Off the record.

(Short colloquy between counsel, outside record.)

[fol. 595] Chairman Darby: On the record.

Mr. Watkins, your motion to dismiss this hearing involves other hearings with which this Board has nothing to do. This Board can not dismiss a hearing on account of some other hearings that other boards in other states will hold at some time in the future. This hearing has been assigned to this Board by the Interchange Commerce Commission, and any change in the order will have to be made by the Interstate Commerce Commission. So I am going to deny your motion and proceed with the hearing.

Mr. Watkins: Mr. Commissioner, I want to note an exception to that ruling and also move that this hearing be postponed until such time as the Commission has an opportunity to pass upon my motion.

The Chairman: I am going to have to deny that motion also, Mr. Watkins, for the same reason that I stated before. I think the Interstate Commerce Commission probably has looked into this matter before it assigned this hearing to this Board; and I do not think this Board would have a right, under an order from the Interstate Commerce Commission, to postpone a hearing unless officially notified by the Interstate Commerce Commission.

Mr. Watkins: May I have an exception noted to that?

The Chairman: Yes, sir.

Mr. Turner: I, N. A. Turner, appearing for the New [fol. 596] South Express Lines, have a formal petition of intervention, serving all parties, which petition states our position. Inasmuch as the cases have been consolidated, I should like to amend the petition to apply to both docket numbers that are being heard at this time.

Mr. Abeles: Mr. Chairman, the formal petition for intervention filed by the New South Express Lines, Inc., is confined to Docket MC 86687, Sub No. 1, involving the McBee-Sumter route. Do I understand now that the intervener in that proceeding is opposing the application in Docket MC 86687?

Mr. Turner: That is right.

Mr. Abeles: Have you any operations in that territory?

Mr. Turner: I don't think that is pertinent. Frankly, whether we have an operation there or not may go to the basis of it later, but at this time I do not feel called upon to answer.

Mr. Abeles: The reason I ask that question, Mr. Chairman, is that intervention is a privilege and not a right, and I think that there must be some statement by the intervener of his interest in the proceeding before he is allowed by the Commission to participate as a party in the case. If it appears that there is no such interest, in a substantial sense, I wish at this time to object to the intervention. I state that because the original petition for intervention [fol. 597] was filed only in Docket MC 86687, Sub No. 1; and I presume if at the time of the filing in Docket MC 86687, Sub. No. 1, this intervener had any interest in this proceeding it would have filed a formal petition for inter-

vention at that time or along with its intervention in the other proceeding. In other words, I am simply trying to clear the case of any unnecessary complications.

Mr. Turner: I don't think my friend has any right to assume what my interest is. If the petition is faulty or insufficient, the Commission will rule on it. I move that I be allowed to proceed under it.

Mr. Abeles: I think I have the right to inquire at this time, since the petition for intervention was not filed in advance but at the opening of the hearing—a practice which, I believe, is allowed by the Commission's rules—I think I should be permitted to inquire what his position is.

The Chairman: I think you should explain what your position is, Mr. Turner.

Mr. Turner: We just withdraw the petition, then. We did not file it in the first place and just filed it on the Commissioner's recommendation.

Mr. Abeles: Let me make it clear, for the record, that the two hearings are consolidated for the limited purpose of receiving evidence as to the fitness, willingness, and ability of the applicants to perform the service. As to the [fol. 598] issue of public convenience and necessity, the two cases are to be considered, according to my understanding and certainly on my insistence, just as separately as if two separate hearings were had. Is that right, Mr. Chairman?

The Chairman: Yes, sir.

Mr. Turner: In order not to prolong the matter, we moved to intervene in both docket numbers, and then, in order not to prolong the matter, we moved to withdraw from one. Since we do ask to intervene in one, we state that we are a common carrier by motor truck, that we do operate service in the territory covered by the proposed operation, and that we do oppose the application of the Seaboard Air Line Railway to operate trucks in the territory, on the ground that there is no public convenience and necessity for such operation.

Mr. Abeles: I accept that statement, reserving the right at the termination of the hearing to move that the Board strike the intervention in the event the evidence does not affirmatively show the interest in Docket MC 86687 which would qualify the intervener to intervene under the Commission's rules.

The Chairman: The reservation will be noted, and the intervener will be permitted to intervene.

Mr. Watkins: I represent the Southern Motor Carriers' Rate Conference, which is composed of over four hundred motor carriers operating in Southern territory, many of [fol. 599] which parallel the lines that are requested in these applications and many of which parallel and maintain motor-carrier service in the general area affected by all the applications of this applicant. We oppose the granting of these applications upon the ground that there is no public convenience and necessity for such operation.

Mr. Abeles: Shall I proceed?

Chairman Darby: Yes, sir.

Mr. Abeles: I call Mr. Sauls.

C. H. Sauls was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Sauls, please state your name, residence, and occupation.

A. C. H. Sauls, Division superintendent, Seaboard Air Line Railway, South Carolina Division; Savannah, Georgia.

Q. Mr. Sauls, you have been called to testify regarding the application of the Receivers of the Seaboard Air Line Railway for a certificate authorizing the establishment of truck service between Garnett, South Carolina, and Gaston, South Carolina, in Docket MC 86687. How long have you been superintendent of the South Carolina Division?

A. Very near three years.

Q. Are you thoroughly familiar with transportation conditions in the territory covered by this proposed truck service?

[fol. 600] A. I am.

Q. Will you now describe what we propose to do?

A. We propose to put in truck service for the smaller stations between Garnett and Gaston, South Carolina, by tying the truck up at Estill, running north to Gaston, and then serving Scotia and Garnett after he returns.

Q. What is the mileage involved in this operation?

A. Eighty-five.

Q. The termini, I believe, are Gaston on the north and Garnett on the south. Is that correct?

A. That is correct.

Q. Estill is where?

A. Estill is 10.2 miles north of Garnett.

Q. Is that the first station north of Garnett?

A. Second station.

Q. That operation is wholly within the State of South Carolina, is it not?

A. Absolutely.

Q. Is it to be physically connected with any other truck service performed either by the Receivers of the Seaboard or by any independent motor carrier?

A. It is not.

Q. It is, as I understand, to be physically isolated from any connecting motor-carrier service?

A. Absolutely.

[fol. 601] Q. Will you now state, please, the purpose that the Receivers have in mind in establishing this operation?

A. The purpose in establishing it is to change the present train service of one train each way per day between Columbia, South Carolina, and Savannah, Georgia, to a night operation.

Q. Is that train service now performed by day?

A. By day, yes, sir.

Q. What will be the schedule of your truck operation?

A. Leave Estill, northbound, at 7:00 a. m., arriving in Gaston at 10:15; returning, arriving Garnett at 1:55 and back into Estill at 2:30 p. m.

Q. Will you now state the method by which we propose to effectuate the plan which you have just described?

A. We propose to make set-out cars out of Columbia for——

Q. When you say "set-out cars" you mean rail cars?

A. Rail cars—LCL freight. We propose to make set-out cars from Columbia for Swansea, North, Denmark, and Fairfax, and from Savannah, Georgia, to Estill, Fairfax, and Denmark, where the truck will be unloaded for these particular stations and transported by the truck for the smaller intermediate stations.

Q. How many intermediate stations are there on that route other than those points at which rail cars will be set out?

A. Fifteen.

Q. You state that the principal purpose you have in [fol. 602] mind is to convert the present day rail schedule to a night train—is that correct.

A. Correct.

Q. On what schedule does your train now operate?

A. The northbound schedule is due to leave Savannah at 7:30 a. m., arriving Cayce Yard, which is Columbia, at 2:30 p. m. The southbound schedule is due to leave Cayce Yard, Columbia, at 6:00 a. m., arriving in Savannah at 2:10 p. m.

Q. What advantages will flow from converting that day schedule into a night schedule?

A. The reason for wanting to change from day to night operation is to give the carload shippers an overnight service between two important towns, Savannah and Columbia. In addition to that, this is a six-day train service; and the carload shippers in the territory between Columbia and Savannah, principally South Carolina points, will be given an opportunity for a full day's loading to be moved out at night after the loading is completed, whereas at the present time at the heavier loading points the trains pass too early to get the carloads loaded and away on that particular day.

Q. Will you explain by a specific instance just what you have in mind?

A. For instance, at Estill, South Carolina; the lumber mill at that point, we will say, loading a car on Monday morning. The loading is not completed at the time the train runs.

[fol. 603] Q. Let me ask you a question there. About what time does the train now pass Estill?

A. Loading is not completed at the time the train runs, about 9:30 a. m. The car is therefore left over until the following day and sustains the equivalent of a twenty-four-hour delay to the Eastern markets.

Q. What will the establishment of the proposed truck service do to correct that condition?

A. It will give us an opportunity to operate these trains at night and pick the cars up after the loading is completed for the day and get them moving at the terminal for other movement to destination.

Q. Is there a substantial movement of the sort that you have just described which will be benefited in the manner you have just stated?

A. Well, all of the freight in carloads loaded in this territory will, of course, benefit. The movement should run somewhere between eight and ten carloads of freight a day. That is during the light season, but during the vegetable season and the watermelon season in the South Carolina territory there is a very substantial movement.

Q. When you say from eight to ten carloads a day, you mean the volume of traffic now moving by rail, do you not?

A. Yes, carload shipments of lumber and other forest products.

[fol. 604] Q. Will that carload traffic be moved by truck?

A. No, sir.

Q. As I understand it, the purpose is merely to transport by the proposed truck service less-than-carload shipments to and from the intermediate points and through stations at which freight cars will be set off. Is that correct?

A. That is correct.

A. During the vegetable movement or other perishable Does that seasonal movement have any effect upon the performance of your freight train?

A. A very material effect.

Q. Please describe that.

A. During the vegetable movement or other perishable movement it is essentially necessary that the shippers in that territory be given just as late an hour for the closing of their loading as possible in order to make the scheduled movement to the Eastern markets.

Q. How will that condition be benefited by the proposed truck service?

A. It will mean that with the train running at night during the lighter seasons the people in the territory will be given a much later closing time in order to load their produce and get it out than they are given today.

Q. I believe you have stated, but if you have not please now state, if the truck operation will serve any points other [fol. 605] than rail stations.

A. None.

Q. We simply propose to parallel our rail line, do we not?

A. Absolutely.

Mr. Turner: May it please the Board, for the sake of the record I would like to interpose my objection to counsel's leading questions, stating over and over again the

purpose of the application. I do not press it, but I do want my objection to appear on the record.

Mr. Abeles: I think the record will show that the information I have secured from this witness was by direct questions, and any questions of a leading nature are simply to summarize what has been said.

The Chairman: You may proceed, Mr. Abeles, but Mr. Turner's objection will be noted.

By Mr. Abeles:

Q. What is the position of the highways over which the operation will be conducted, with relation to our rail lines.

A. Practically parallel, the entire distance.

Q. Does it digress from the railway to any substantial degree at any point?

A. It does not.

Q. Does it reach all the stations intermediate between the termini of the proposed truck service?

A. Yes, sir.

[fol. 606] Q. You have mentioned carload freight, Mr. Sauls. Will less-than-carload freight be benefited by this proposed service in any way?

A. It will, by earlier delivery of the freight at the destinations.

Q. Can you give us a specific example of that?

A. Freight moving now, I will say out of Columbia, going to Denmark, will leave Columbia at 6:00 a. m., arriving in Denmark anywhere from 9:00 to 11:00 a. m., making an afternoon delivery. Under the proposed change of train service, this freight will be available for delivery to the consignees early in the morning.

Q. That freight will still be carried by train, will it not?

A. Still be carried by train.

Q. The train operation, however, I believe you said, would be conducted at night?

A. At night, instead of day.

Q. And that would permit early morning deliveries at Denmark. Now, you stated, I believe, there would be four set-out points for rail cars between the termini of this proposed truck operation?

A. There will be four out of Columbia and three out of Savannah.

Q. Did you mention the three out of Savannah?

[fol. 607] A. I think so—Estill, Fairfax, and Denmark.

Q. And by set-out points do I understand you to mean that freight from Columbia moving south, on the one hand, and from Savannah moving north, on the other, will still be carried by train to these set-out points?

A. That is correct.

Q. And distributed from there by truck?

A. That is correct.

Q. With regard to LCL shipments which are carried by rail to the set-out points, what will be the delivery operations for such shipments to the smaller intermediate points?

A. The delivery operation to the smaller intermediate points will be on the same day as heretofore, but anywhere from an hour to three or four hours earlier.

Q. Give us, if you will, a specific illustration of that service.

A. Well, we will take a shipment moving from Columbia to Ulmers. Under the present operation, 75 would ordinarily arrive at that point from 10:30 a. m. until 12:00 noon.

Q. Train No. 75?

A. Train No. 75.

Q. That is southbound?

A. Yes, sir. Whereas the same shipment would be loaded on Fairfax under the proposed operation and be delivered at 8:00 a. m.

[fol. 608] Q. When you say loaded you mean would be delivered by rail?

A. Would be loaded on cars at Fairfax and delivered by the truck at 8:00 a. m.

Q. Contrast that with the service which is now performed on less-carload freight consigned to Ulmers.

A. Under the present service it would arrive at Train 75 around eleven o'clock or noon.

Q. Saving several hours in delivery?

A. Saving approximately four hours in delivery.

Q. Is that of importance to shippers, as a rule?

A. Yes, they had rather have the earlier deliveries than to have the afternoon deliveries.

Q. What effect will the proposed truck operation have upon the ability of the night train to switch industries along this route?

A. It will enable the train crews to switch the plants at a time when their labor is not working and avoid delay

that is occasioned by switching of plants at the time the forces are working.

Q. In your experience, Mr. Sauls, have you found any decided preference on the part of plant operators as to switching in the day time and the nightfime?

A. It is generally desired by all people loading freight in carload movements to have their plants switched after they complete their day's work, in order to avoid delay.

[fol. 609] Q. Why will the switching of plants by the local train be facilitated through the proposed truck operation?

A. The train movement will be facilitated by avoiding stops and delays at small points where there is practically no carload business and the LCL freight is extremely light.

Q. There is some, however?

A. Some. Not very much.

Q. Please give us your views with reference to any savings in expenses which the proposed truck operation will permit.

A. There will be no savings.

Q. Will stops be eliminated?

A. Stops will be eliminated at a number of stations.

Q. Has that any effect upon the cost of fuel?

A. There will be some saving in fuel in train stops, which will be offset by the expense of the truck.

Q. But there will be that saving, at least in train-operation costs.

A. Yes, there will be that saving in train operation.

Q. Do you propose to decrease in any way your train service?

A. In no way whatever. We are simply proposing a better service for the same patrons in the territory.

Q. The same number of round trips will be made?

A. Same number of round trips will be made.

Q. The only change being in the operation of the night schedule instead of the present day schedule?

[fol. 610] A. That is right.

Q. Have you any information regarding the volume of less-carload tonnage moving to and from the local stations intermediate between Gaston and Garnett?

A. I have.

Q. Have you that with you?

A. Yes, sir.

Q. Can you tell us, for a given period, how much less-car-load tonnage is now moving to and from those points?

A. For the period of February, 1936, through February, 1937, a period of thirteen months, we had the following less-carload freight to these points:

	Tons		
	In	Out	Total
Gaston	21	0	21
Woodford	34	6	40
Livingston	20	0	20
Neeces	106	93	199
Norway	164	156	320
Govan	24	70	94
Olar	140	88	228
Ulmers	41	18	59
Sycamore	25	8	33
Gifford	40	420	460
Luray	23	20	43
Scotia	23	29	52
Garnett	102	36	138

Witness (Continues:) In the outbound movement is included LCL shipments of cotton, some of which moved in carload lots; also naval stores, which moved under the any-quantity rates and is therefore subject to store-door and pick-up delivery. This is true at all points possibly [fol. 611] with the exception of Gifford, the outbound movement from that point being in other commodities.

Q. Have you totaled the tonnage which you have just enumerated?

A. I have not, but the average will run somewhere around four tons a day.

Q. I will not delay by asking you to do that, because the record will show it. Mr. Sauls, what will be the effect of the inauguration of the proposed truck service upon competing highway carriers, if any?

A. I don't see that there will be any effect, as there is no other connection with the truck, but it is simply a movement from set-out cars in this territory to the smaller points.

Q. Do you know of any competing truck lines in this territory?

A. I am not familiar with the lines of the trucking service, but I don't know of any in this particular territory. I have never seen any.

Q. On what forms of bills of lading will the traffic carried by the proposed truck service move?

A. Strictly on the regulation railway bills of lading and waybills.

Q. As I understand it, we propose to carry by this truck [fol. 612] only traffic which is offered at railway stations for transportation under railway bills of lading?

A. That is correct.

Q. Can you see any reason why a service limited to the extent you have just stated will in any way encroach upon the service performed by or traffic carried by competing truck lines, if there are any serving this territory?

A. I can not.

Q. What is the nature of the less-carload traffic for the transportation of which we are establishing this truck service, with regard to the length of haul?

A. I would say that the tonnage handled in this particular territory will run not less than 95 per cent of small shipments moving from the Chicago, St. Louis, and Eastern territories.

Q. Would that traffic naturally move by truck, regardless of the establishment of the proposed service?

A. I would say not, because the shipments are too small and the points of origin are too scattered.

Q. It has been heretofore moving by rail, has it not?

A. Heretofore moving all rail, and in some instances, of course, rail and water.

Q. Is it possible to estimate the revenue which would accrue exclusively to the truck lines in the operations which we propose?

[fol. 613] A. It is not.

Q. Will you explain for the record why?

A. In the first place, the shipments will move over various railroads and boat lines; the distance is very small; and it would necessitate taking each and every less-than-carload waybill and figuring up its revenue on a mileage basis. There would be no other way to get it; and that would be entirely too expensive to undertake.

Q. Is it proposed, if you know, to keep separate accounts for the rail and truck operations?

A. It is not.

Q. Would it be possible, for example, to estimate in advance of actual experience the proportion of the Seaboard haul on a given less-carload shipment which would be carried by rail and truck respectively?

A. It would not. Take, for example, shipments from Chicago to our territory, which at times move through the Montgomery gateway, at other times through the Atlanta gateway, and in many instances through Bostic and Hamlet, from the same point of origin to the same destination.

Q. Would there be a difference in the revenue accruing to the Seaboard dependent upon the gateways through which the shipment moved?

A. Yes, because there would be a difference in the mileage.

Q. And the divisions, generally speaking, I understand [fol. 614] are made on a mileage basis?

A. Most of them.

Q. Mr. Sauls, will any freight which is moved by this proposed truck service from Gaston south be delivered to the truck by any other truck service or by rail?

A. By rail entirely.

Q. Is the same thing true of traffic moving from Garnett north by truck?

A. The same is true at all stations.

Q. And I understood you to say, of course, that as to traffic consigned to certain intermediate points, much of it will move through Gaston and Garnett by rail and be laid off at the lay-off points which you have named?

A. Yes, the largest percentage of it will. The set-out cars for LCL freight, of course, being set out at the principal points, where we would have more less-than-carload tonnage than at other points.

Mr. Abeles: I think that is all, Mr. Chairman.

Chairman Darby: Proceed, Mr. Watkins.

Cross-examination.

By Mr. Watkins:

Q. Do you have any intrastate rights between Gaston and Garnett?

A. I think that has been approved.

Q. Are you operating it now?

A. Not at the present time.

[fol. 615] Q. Are you waiting to see if the interstate rights are approved before you begin operation?

A. Yes, sir.

Q. I believe you testified you are familiar with the transportation service in this area by rail but not by truck?

A. Yes.

Q. Do you give a pick-up and delivery service at those points?

A. We do when the rate is 20 cents per 100 pounds or more.

Q. Under your tariff provision?

A. Yes, sir.

Q. Is that true to all of these points?

A. Yes, sir.

Q. Would that pick-up and delivery service be performed by this truck?

A. No, sir.

Q. It would not be performed by this truck?

A. No, sir.

Q. Would you have any objection to the Commission's limiting it so that it would not be performed by this truck?

A. None whatever.

Mr. Abeles: I want it clearly understood that that does not commit the applicant to a permanent policy in any way. As I have previously stated, it seems to me that it should be of no consequence to the protestants in this case with [fol. 616] what equipment we perform the service but that they should be interested merely in the scope and extent of the service itself.

Mr. Watkins: May I say, Mr. Chairman, that the right of a rail carrier to perform pick-up and delivery service is still questioned, and I want to be sure that this application is not one to perform pick-up and delivery service at those points?

Mr. Abeles: That I can acquiesce in. The application itself will show that.

Mr. Watkins: Then it is not your intention by these applications to obtain the right to give pick-up and delivery service at those points involved?

Mr. Abeles: Not at all. We do not have to obtain the right to perform pick-up and delivery service under the

Federal Motor Carrier Act. That is a service which is within the Commission's jurisdiction under Part 1 of the Interstate Commerce Commission Act.

Mr. Watkins: Do you maintain trucks at this point to perform pick-up and delivery service?

The Witness: We do not.

By Mr. Watkins:

Q. Do you have people employed at those points?

A. Under contract.

Q. Then a shipment which moved into one of those points [fol. 617] by truck would be transferred to the truck of your contract carrier to perform store-door delivery?

A. Shipments coming into these points by our truck would be unloaded at our depot and later would be delivered by another truck which we have under contract.

Q. Then it would be possible, if this application were granted, for traffic to be delivered into one of these points by motor carrier and be afforded delivery service by another motor carrier—is that correct?

A. I do not think that that is correct; I do not think it is necessary for the draymen in these little towns to have a certificate as such.

Q. I understand that is your contention, but I am asking you if that is not the physical fact—if it is not the way it might run under this application.

A. We are proposing to do under this application just exactly what we are doing today in freight cars and the pick-up and delivery service, and it is not my understanding that people doing this class of work are required to get any kind of certificate.

Q. You still have not answered my question. I am asking you whether or not, if this application is granted, it would be possible for freight to move inbound to one of these stations by motor carrier and then be afforded a delivery [fol. 618] service by another motor carrier.

A. Not under our present contracts at these stations, no, sir.

Q. Are your present contracts limited to the delivery of freight inbound by rail?

Mr. Abeles: Off the record.

(Short discussion, outside the record.)

Q. Will you answer the question?

A. I can answer the question this way; under our present operations we have at these small stations a contract with some particular individual to make the deliveries to the stores, which is not required by any special kind of vehicle, and in many instances wagons are used and in other instances motor vehicles. That is the actual practice.

Q. And these same persons that are under contract with you at those stations would also handle for delivery the freight moving into those stations by your proposed motor-carrier operations?

A. From the depot, yes.

Q. How do you propose to get this freight from Columbia to Gaston?

A. The Gaston freight from Columbia would be loaded into a car of LCL merchandise that would be set out at Swansea by the night train.

Q. Then when your truck leaves Gaston it will be empty? [fol. 619] A. Correct.

Q. And it will get its first load at Swansea?

A. The truck originally starts at Estill.

Q. As I understand it, by this service you do not contemplate any through service by motor carrier, but you contemplate the truck's moving over this route and loading at the various points where you have these set-out cars?

A. That is right.

Q. Would you be willing for your certificate to be so limited?

Mr. Abeles: I can answer that. No.

Mr. Watkins: Let the witness answer it.

Mr. Abeles: I think that is a question for counsel to answer.

Mr. Watkins: He has testified to what he is proposing to do. Now I want him to state to what he is willing to limit these operations.

Mr. Abeles: I think that is a question for counsel to answer, as to the policy and scope of the operation. I might add to my statement that we are willing to have the application and authority limited to the scope of operation for which we have filed application. We want no more and no less.

Mr. Watkins: If by any chance the application which you have filed for differs from the service which your wit-
[fol. 620] ness intends to do, are you willing for your application to be limited to what the witness has stated is the policy and is what you intend to do?

Mr. Abeles: I shall have to ask that the question be read.

Exam. McCaslin: Off the record.

(Statement by the Examiner, outside the record.)

By Mr. Watkins:

Q. Let's assume a shipment from Columbia, South Carolina, to Denmark, South Carolina. How do you propose to move that?

A. In a carload of LCL freight from the Columbia warehouse to the Denmark warehouse by train.

Q. Assuming a shipment from Columbia to Govan. How would that be handled?

A. A shipment from Columbia to Govan would move from Columbia warehouse in less-carload shipment loaded in the car set out at Denmark and would be picked up from there and moved by the truck to Govan.

Q. Is Govan south or north of Denmark?

A. South, seven and one-half miles.

Q. Then it would not be your purpose to move any Columbia freight from Gaston to Govan all by truck?

A. No, sir.

Q. And you are not proposing any such service as that?

A. No, sir.

[fol. 621] Q. Why did you decide to start this service at Gaston instead of Columbia? That is your terminal, isn't it?

A. The reason for it is that we are figuring on using only one truck and serving only very small points, in order to avoid train stops. The train will have to stop at these set-out points anyway, in order to move carload freight. I might add there, Mr. Watkins, that as a matter of fact the truck really starts from Estill.

Q. Did you propose to handle over this truck operation interstate freight that originates on your line in the states of Alabama, Georgia, Florida, North Carolina, and Virginia?

A. Yes, sir.

Q. That would be moved by the Seaboard Air Line Railway either by rail or truck or rail and truck to final destination?

A. Yes, sir.

Q. Do I understand that you do not propose to move any carload traffic by these trucks?

A. No, sir.

Q. How large a shipment would you assume would be moved by this service?

A. Well, move any less-than-carload shipment that the truck will be capable of handling from the set-out point to these smaller stations. If it is too large for the truck, then it would be necessary to move it by train.

[fol. 622] Q. I believe you testified that you do not intend to keep separate records for your motor-carrier operation and your rail operation?

A. That is correct.

Q. Do you agree with the theory that this motor-carrier operation is under the jurisdiction of the Federal Motor Carrier Act rather than the Interstate Commerce Act?

Mr. Abeles: I think that is calling for a legal conclusion and object on the ground that the witness is not qualified to answer.

Mr. Watkins: I am asking him his theory on this subject as the basis for further questions which will follow on accounting practices.

Mr. Abeles: I still say that it calls for a legal conclusion which the witness is not qualified to draw.

The Chairman: State the question again.

Mr. Watkins: My question is whether the witness' theory is that this motor-carrier operation comes under the Federal Motor Carrier Act or under the Interstate Commerce Act, Part 2 or Part 1.

The Chairman: I do not see that that would have any particular bearing on the case, whether or not he has any theory.

Mr. Watkins: You sustain the objection?

The Chairman: Yes, sir.

[fol. 623] By Mr. Watkins:

Q. Are you familiar with the proposed accounting rules for motor carriers which have been tentatively approved by the Interstate Commerce Commission?

A. I am not.

Q. Is there any motor-truck operation of the Seaboard Air Line in your division?

A. Yes, sir.

Q. There is?

A. Yes, sir.

Q. Do you know the cost of operating trucks?

A. I know the cost of operating those that I am operating—the approximate cost.

Q. I believe you testified that there was not going to be any saving in this except by virtue of the elimination of additional stops by your train?

A. That is right.

Q. And there would be an additional expense, which would be the cost of the truck operation?

A. Correct, less what would be saved in train stops.

Q. Exactly. That is the point I am getting at. What I want to know is what is the figure that you believe the cost of the truck operation will be and the saving from the elimination of stops of the trains.

A. I had not figured that, but based on $2 per stop for the train the saving would run $728 per month, on a 26-day [fol. 624] basis, and that would be really more of a saving than the cost of the truck operation, which we are now handling for around $350 per month.

Q. That is assuming a stop at each point on each train each way each day?

A. It is not. I only figured fourteen stops would be saved per day, and there are fifteen stations.

Q. Then you eliminate one a day in your calculations?

A. No, I eliminate more than that. Assuming each train would stop at those points, I eliminate a little more than half of them, because the trains would not stop at every point every day.

Q. That is what I was getting at; they will not stop at every point every day. And there are only fourteen points on this line?

A. Fifteen.

Q. Which you do not contemplate stopping at often if the proposed service goes in?

A. Yes.

Mr. Watkins: That is all.

Mr. Turner: I have just a very few questions I should like to ask this witness. May I, however, ask the Board when it is the intention to adjourn for lunch?

The Chairman: At the close of this witness's testimony.

[fol. 625] Mr. Turner: I should like, then, to make this statement in the record. This hearing was called for nine o'clock yesterday morning. The protestant New South Express Lines had two gentlemen who hold public office in the Town of Timmonsville come here to testify as witnesses in the docket to follow this one. Prior to the opening of this hearing we requested of counsel for the applicants that these out-of-town witnesses, as well as the out-of-town witnesses whom he had, be allowed to testify out of order. It is now my purpose to request that this witness be excused for the time being, to the point of my waiving any examination which I care to make, and permit us to put on these two witnesses from Timmonsville at this time. Otherwise we may not be privileged to have their testimony in this record.

Mr. Abeles: Off the record.

(Short discussion between counsel, outside record.)

The Chairman: On the record.

Mr. Abeles: I am entirely willing to accommodate you in that respect, Mr. Turner.

The Chairman: This witness is excused temporarily.

Call your first witness, Mr. Turner.

[fol. 626] A. R. Garner was sworn and testified as follows:

Direct examination.

By Mr. Turner:

Q. Mr. Garner, you live in Timmonsville?

A. Yes, sir.

Q. Do you hold any public office?

A. I am Mayor.

Q. How long have you been a resident of Timmonsville?

A. Well, I was born in Timmonsville, and I have been back there about forty years.

Q. You lived there for some time prior to that?

A. Well, I have lived there about forty years. I lived in Darlington a while, 'way back.

Q. Mr. Garner, are you familiar with the transportation facilities that are now afforded the community of which you are the Mayor?

A. Yes, sir.

Q. What facilities do you have now?

A. Well, we have the Seaboard train, comes in there and delivers freight and passengers once a day; also the Atlantic Coast Line comes in there. We also have some truck lines that come in there. Of course, the bus lines pass through there.

Q. Mr. Garner, is there now any need or public necessity for any change in the service of handling freight into [fol. 627] the Town of Timmonsville?

A. Well, not as I see it, no, sir. I don't know of any that could be benefited more than what we have got.

Q. Are you or are you not familiar with the application of the Seaboard Air Line that is in discussion now for a line from McBee to Sumter and return?

A. Yes, sir.

Q. Do you, speaking for yourself and your constituents in Timmonsville, approve or disapprove of that application?

A. I personally disapprove of it, and I have talked with a good many citizens of Timmonsville——

Mr. Abeles: Let's confine the witness's testimony to what he personally knows.

Mr. Turner: We submit it is proper, your Honor. He said he had talked to the people.

Mr. Abeles: We object, your Honor.

Mr. Turner: It is just as proper as the testimony of the witnesses from Chesterfield County who were here yesterday.

Mr. Abeles: I want to explain that I am not intending to be obstructive, but the purpose of my objection is that Mr. Garner is attempting to give certain views based on the opinions of other parties, and I have no opportunity to examine those other parties as to the basis of their opinion.

The Chairman: Mr. Abeles, Mr. Garner is representing [fol. 628] his community in the capacity of mayor; they

have asked him to come here before this Joint Board and represent him; they have told him of their approval or disapproval; and I think his testimony should be allowed to go in, and I am going to rule so.

Mr. Abeles: Note my exception, please.

The Chairman: It may be noted.

By Mr. Turner:

Q. Mr. Garner, you were about to state why they object.

A. My main reason for objection is this. The Seaboard comes into Timmonsville on, you may say, a spur line; it stops at Timmonsville. The way I see it, if the Seaboard is allowed to have a truck line and take off this business they have already got and put it into the truck line, it is going to do away with the revenue of the Seaboard in Timmonsville, and it will be only a matter of time when the Seaboard will want to take up the line into Timmonsville, and we paid the Seaboard to go into there. We invested $10,000 in it. If they get the revenue to the bus line and have practically no revenue to the train line, of course they will want to come in later and take up the train line.

Q. Where you use the word "bus" what do you mean?

A. I mean truck.

Q. Mr. Garner, it has been testified in the other cases, and I state this hypothetical question: Assuming that the [fol. 629] officials of the railroad who testify in this case should testify that they have no intention of removing the present rail service or reducing the present rail service, does that alter your testimony, that you do not want this application granted?

A. Well, if they will agree to it we would like to have that in the record. We got it in once and would like to have it in again.

Q. Did this same applicant ever make any representations to you or your community at the time you advanced this sum that you spoke of?

A. No, that was 'way back, you know. We never agreed to the truck or anything else.

Q. Did they or did they not tell you anything about proposing to extend your line?

A. They agreed to extend the line back, miles on.

Q. Did they extend it?

A. No, sir. But we paid our money.

Mr. Abeles: We think this is all irrelevant; the only question before this Board is present and future public convenience and necessity. Past history has nothing to do with it. The Commission has held so time and time again, and I really feel we are wasting our time with this testimony.

Exam. McCaslin: Off the record.

(Remarks by the Examiner, off the record.)

[fol. 630] The Chairman: On the record.

By Mr. Turner:

Q. Do I understand that you still favor the Seaboard's operating into the town of Timmonsville?

A. I do, yes, sir. We want them to continue to operate.

Q. And you want them to operate on the railroad?

A. I want the Seaboard Air Line to operate on the railway. I want the rails to continue to be operated on.

Mr. Turner: The witness is with you.

Cross-examination.

By Mr. Abeles:

Q. Mr. Garner, are you engaged in any mercantile business?

A. Well, not specially, no, sir.

Q. Do you receive or ship freight?

A. Sometimes, yes, sir.

Q. What character of freight?

A. Well, different kinds. Personally, I ship very little freight.

Q. Are you familiar with the service now rendered by the railway at Timmonsville?

A. It is good.

Q. Do you know how long it takes for the receipt of a shipment made by rail from Columbia, for example, to Timmonsville?

A. No, sir, I do not.

[fol. 631] Q. If we assume that freight shipped from Columbia to Timmonsville would, through the establishment of the truck service that we propose here, be expedited as much as twenty-four hours, would that benefit your community?

A. Well, as I say, there is a truck service there now, and I guess the trucks would give the same service that you would give.

Q. Is there truck service, do you know, between Columbia and Timmonsville?

A. I could not say.

Q. You really do not know, then, what service your community is getting?

A. I know there is trucks bringing in freight there, but I don't know where from.

Q. You do not know where it comes from?

A. No, sir.

Q. And you do not know how long it takes to get freight from Columbia to Timmonsville?

A. No, sir.

Q. Or from any other point to Timmonsville?

A. No, sir.

Q. The point I am getting at is this. If we can establish to the satisfaction of yourself and other residents of the community in which you live that the railroad can expedite the shipment of freight to Timmonsville from points where [fol. 632] you do your marketing, and expedite that delivery materially through the establishment of this proposed truck service, do you or do you not think that would benefit your community?

A. Well, that would be all right, providing it does not do away with the benefit of the railroad, you understand—provided there would be no chance of taking our railroad up. That is the main thing with me. If you go to take a carload of merchandise——

Q. Mr. Garner,——

Mr. Turner: We submit, Mr. Chairman, that the counsel has no right to interrupt the witness.

Chairman Darby: I think the witness has a right to finish his answer.

(Witness continues:) Take a truckload of freight at McBee, and you divide it up and send it out on a truck—take out the truck stuff out of it and send it out on a truck and send the balance of the stuff out on the train, you are out two expenses; and if you are taking the stuff away from the railroad how can the railroad pay expenses? How can the railroad continue?

By Mr. Abeles:

Q. You mean the railroad in its rail service?

A. Yes, sir. What we are interested in is keeping the railroad, you understand. That is what we are interested in. [fol. 633] Q. Then if you are assured that the inauguration of this truck service would not result in the abandonment of the rail service, would you withdraw your opposition, to this proposal?

A. Well, I am not so much in opposition to the truck service or anything like that; but as I see it, or anybody else could see it—but as I see it, if the freight is taken off the railroad it is just a matter of time before the railroad would be taken up. I don't see how you could give me any assurance at all that it would not be, because when it gets to the point that you are taking all the freight by truck of course you are going to discontinue the railroad.

Q. You have not yet answered my question, and I will put it in another way. The only reason you are opposing this truck service is your fear that it will result at some time or other in the abandonment of the rail service?

A. To the greatest extent it is.

Q. If you were assured that that would not take place, either now or in the future, you would have no opposition to this proposal?

A. Well, if there was any way——

Mr. Abeles: Just a moment. I think the question is susceptible of an answer.

Exam. McCaslin: If the examiner may intervene, I think the question is purely hypothetical and that answer to it [fol. 634] would not benefit the proceedings in any way.

Chairman Darby: I think any assurance of guaranty that the railroad might give before this Board they *they* would not abandon those tracks would not have the slightest weight before the Interstate Commerce Commission on a petition to abandon them.

Mr. Abeles: To do what?

The Chairman: In other words, if the railroad were to apply to the Interstate Commerce Commission for permission to abandon those tracks, I don't think any assurance the railroad might give before this Board would have any bearing with the Commission whatever.

Mr. Abeles: I agree with the Chairman entirely. The information I am trying to get from this witness is the

single definite, specific statement that he is appearing here in opposition not because he is opposing the inauguration of the truck service but because he fears that it will lead to the abandonment of the railway.

The Chairman: I think he has stated that.

Exam. McCaslin: At least six times.

Mr. Abeles: I don't think he has.

The Chairman: Make that statement for him, Mr. Garner.

The Witness: All right, sir.

Mr. Turner: I address the Chairman, and I should like to make a remark before any other is made. Mr. Chairman, [fol. 635] I take the position that since there have been three questions put as to what the witness predicated his objection upon, he also stated in the record that there is no public convenience or necessity for this line.

Mr. Abeles: That is why I am trying to get the witness to state specifically his position.

The Chairman: I ruled that he might state his position.

Mr. Abeles: If he will answer this question I am through with him.

By Mr. Abeles:

Q. Your only purpose in opposing this application, as I understand it, Mr. Garner, is your fear that if the truck service is inaugurated it might at some future time lead to the abandonment of your rail service. Is that or is that not a correct statement of your position?

A. Well, as I see it, if the truck service is established, just as I see it (we all have the right to see it as we do), there is nothing in the world, if you take the freight from the railroad and the railroad is not going to have any revenue to any extent, there is no assurance that you could give that it would not be. I don't see how I could get any assurance at all that it would not be, because if the revenue is going to be taken away from the railroad of course they will want to abandon it.

The Chairman: Answer yes or no to the question that he asked.

[fol. 636] Mr. Abeles: Let the question be read, please.

Mr. Turner: Off the record.

(General discussion, outside the record.)

The Chairman: On the record.

If you feel like answering yes or no, Mr. Garner, answer in that way and then explain to him as best you can, because that will clarify the situation. Go ahead and answer him again.

Mr. Abeles: Let the question be read, please.

(The reporter reads the question, as follows: "Your only purpose in opposing this application, as I understand it, Mr. Garner, is your fear that if the truck service is inaugurated it might at some future time lead to the abandonment of your rail service. Is that or is that not a correct statement of your position?")

A. You say you want me to answer yes or no?

Chairman Darby: No, I withdraw that request. Answer it as best you can.

A. I say that is the greatest extent. I am satisfied in my mind that if they establish this truck line it will be only a matter of time when the Seaboard will be removed from Timmonsville because of want of revenue. I don't want the Seaboard to move from there, because we paid them $10,000 to come in there, and we get a little revenue out of them now, and if they run the truck in there we will [fol. 637] not get any revenue.

Mr. Abeles: I think that is all, Mr. Chairman. I think that statement clarifies it.

Redirect examination.

By Mr. Turner:

Q. There is no need for more freight service in the town of Timmonsville at present, is there?

A. No more than I have stated.

Mr. Turner: I think that is all, Mr. Garner.

W. R. McLeod was sworn and testified as follows:

Direct examination.

By Mr. Turner:

Q. Mr. McLeod, where do you live?

A. I live in Timmonsville, South Carolina.

Q. Dr. McLeod, do you hold any public office in the town of Timmonsville?

A. Town clerk.

Q. How long have you been a resident of Timmonsville?

A. Been there about thirty-five years now.

Q. Are you familiar, or not, with the transportation facilities into the town of Timmonsville?

A. Yes, sir, I think I am pretty familiar with them.

Q. Is there any need now for any additional transportation service into Timmonsville?

A. I would not think so.

[fol. 638] Q. Dr. McLeod, were you with the city at the time, or do you have any personal knowledge of the concessions made by the Town to the Seaboard Air Line Railway for coming into that community?

Mr. Abeles: I have heretofore stated my position on that question. I do not think that what has gone on in the past has anything to do with the present and future public convenience and necessity, which is the sole issue before this Board.

Exam. McCaslin: Did this witness hear the testimony of the last witness on that point?

A. Yes, sir.

Exam. McCaslin: Would he testify to the same facts?

A. As to the money, yes, sir.

Mr. Abeles: Does that cover the entire scope of his testimony?

Mr. Turner: Yes, sir.

Cross-examination.

By Mr. Abeles:

Q. Dr. McLeod, if it were shown by the record in this case that what the Seaboard is proposing to do would actually improve the service received by the town of Timmonsville, would you have any objection to the proposed service?

A. Not if it were shown that it would improve it, no, sir.

[fol. 639] Q. And you would withdraw your objection?

A. I would not withdraw, because I would not have any proof; you could not show me.

Q. If we do show that?

A. But you can not show it.

Q. Just a moment. If we can show that, you of course would welcome that improvement?

A. Yes, if you could show it.

Mr. Turner: I submit the witness has a right to go on with his explanation, as he was trying to do when counsel stopped him.

Mr. Abeles: I thought he had finished.

The Witness: What I meant by that was that it would take time to show if we needed it. Right at present I think we have enough. We have Atlantic Coast Line, direct route to Columbia and Sumter; we have an express line that makes a daily route.

By Mr. Abeles:

Q. Are you familiar with the time now consumed in the shipment of freight from Columbia to Timmonsville by rail?

A. Well, it is a daily train; I think if it is loaded in Columbia this morning it will get there in the afternoon.

Q. You understand that?

A. Yes, sir. Shipped this afternoon and get there in the morning. If it leaves Columbia, I understand, before four [fol. 640] o'clock or three o'clock in the afternoon, we get it in the morning. That is my understanding; I am not sure about that. That is over the Coast Line; not over the Seaboard.

Q. If we can show that is not a fact on shipments made by the Seaboard and that we can offer you, through the establishment of this truck service, a very much expedited delivery at Timmonsville, you would welcome that, would you not?

A. You mean go by McBee?

Q. Yes, sir.

A. You could not do it.

Q. If we can show that we can?

A. We have a truck service that makes quicker connect n than that.

Q. I am talking about the Seaboard service only.

A. I was talking about the service generally.

Q. No, I did not mean that.

A. My last experience with a shipment; it left there in the night, about eight o'clock, and got to Greenwood the

next morning. That was by truck line; that is quicker than the railroad, of course.

Q. I put my question this way. Have you any objection to the Seaboard's improving its service to Timmonsville from Columbia or any other points from which Timmonsville receives freight?

[fol. 641] A. No, provided it does not affect the railway from McBee to Timmonsville.

Mr. Abeles: That is all.

Mr. Turner: Nothing else, Doctor. Thank you very much.

The Chairman: Witness excused.

Applicants' Evidence

Mr. Abeles: We have one witness from out of town whom I should like to put on at this time, so that he may then be excused.

Chairman Darby: All right, sir.

Mr. Abeles: I call Mr. Manship.

C. A. Manship was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. What is your name?

A. C. A. Manship.

Q. Where do you reside?

A. Hartsville, South Carolina.

Q. That is on the route of the truck service proposed by the Receivers of the Seaboard between McBee and Sumter, is it not?

A. Yes, sir.

[fol. 642] Q. Will you state briefly your position?

A. As a shipper and as a receiver of freight during the past thirty-five years——

Q. Let me interrupt. In what business are you?

A. The fertilizer business.

Q. Dealer in fertilizer?

A. Manufacturer.

Q. Manufacturer of fertilizer. Go ahead.

A. Also, I have the general interest of the town in mind. It has been my position all the time to get the very best service from transportation people possible, the most ex-

peditious service. That is what we have been fighting for and cussing the railroads about quite a while.

Q. Have you had experience with shipments received by you via the Seaboard from Columbia or other points?

A. Yes, I have had numbers of shipments.

Q. Can you tell us approximately how long it takes a shipment to go from Columbia to Hartsville?

A. I am not familiar enough with the railroad schedules fight now to say absolutely how long it would take. As a receiver of merchandise, we have to wait until the stuff is delivered to us.

Q. If it is shown in this case that by the inauguration of truck service for which authority is sought in this application deliveries from Columbia and other points to Harts-
[fol. 643] ville can be expedited as much as twenty-four hours, or possibly less, would that be helpful to you and to other residents of this territory?

A. Undoubtedly so.

Q. Can you see any reason for objection to this proposed service, with the result that I have just stated, from any resident in this territory at all?

A. I can not.

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: Any questions, Mr. Turner?

Mr. Turner: Yes, sir.

Cross-examination.

By Mr. Turner:

Q. Mr. Manship, you say you are a shipper and receiver of freight, principally fertilizer?

A. Fertilizer and bags—various things that go toward the manufacture of fertilizer.

Q. You are engaged in the business of manufacturing fertilizer in Hartsville?

A. Yes, sir.

Q. Do you get most of your shipments in carload lots?

A. Yes, sir.

Q. So if they instituted the service applied for here, for the shipment of less-than-carload freight, it would not affect you at all, would it?

A. Affect me to the extent that I get less-than-carload
[fol. 644] shipments.

Q. But your principal shipments are carloads?

A. Yes, sir.

Q. Do you know Mr. C. T. Jordan?

A. Yes, sir.

Q. Is he not engaged in the transportation of property by motor truck?

A. I understand so, yes, sir.

Q. He lives in Hartsville, does he not?

A. Yes, sir.

Q. Has he ever hauled anything for you?

A. I don't think so. I have talked with him several times about the hauling of stuff, but I don't think I have ever got any by him, because his charges were always too high. There might be some little specific case. Wait a minute; I received by his truck line just a few days ago a little shipment from Greensboro.

Q. Was the service, in point of time, satisfactory?

A. The shipment was a long time getting there. I don't know where the fault was.

Q. You mean from Greensboro there?

A. Yes, sir, from Greensboro.

Q. Do you know whether Mr. Jordan holds himself out to haul for everybody generally there?

A. It is my understanding he hauls for the public.

[fol. 645] Q. Doesn't he have some official position there, or isn't he connected with the Chamber of Commerce?

A. He may have been on some committees there of the Chamber of Commerce.

Q. He is a man well known there?

A. Well known.

Q. And he does do a trucking business?

A. I understand he does.

Q. You get freight from Columbia by the Atlantic Coast Line direct to Sumter and then by Seaboard to Hartsville?

A. The Coast Line goes into Hartsville. I should think if the Coast Line would make a shipment from Columbia to Hartsville it would go through Florence. If the Seaboard makes a shipment to us from Columbia, probably it would go down by McBee.

Q. I show you a railroad map of the State of South Carolina, and I ask you if it is not just about the same distance and about as circuitous a route by either the Seaboard or Coast Line Railroad?

A. I think it is a little farther by the Coast Line.

Q. But isn't the route approximately the same?

A. Within a few miles.

Q. Is it your opinion that the transfer of freight from a box car at McBee to a truck would render any greater service, normally speaking, than the transfer at Florence [fol. 646] from one box car to another?

A. Will you state that question again?

Q. In your opinion, would it be any better service for a railroad to ship by box car from Columbia to McBee and to transfer at McBee to a motor truck than to ship by Florence and transfer at Florence from one box car to another?

A. That would depend on the delay in the schedule of the train from Florence to Hartsville over the Coast Line and the schedule of the truck from McBee.

Q. In other words, the nature of the service is not so important as the actual performance of the service?

A. The quicker you can get the service performed and the cheapest kind of way is the service you are looking for all the time.

Q. Mr. Manship, you are not in favor of the Seaboard's taking up its tracks over there, are you?

A. No, sir. I don't think there would be any danger of its taking up its tracks.

Cross-examination.

By Mr. Watkins:

Q. Do you know of any truck lines giving service at Hartsville?

A. The New South Express Line furnishes service there. Between what points, and so forth, I am not familiar.

Q. Do you ever use their service?

A. I do not recall. It may be I got a little shipment on [fol. 647] their line.

Q. Generally speaking, you do not know their service?

A. No, I am not familiar with it.

Q. Is there any other service you know of?

A. There are some other truckers there. Chapman is there.

Q. Is that Thomas G. Chapman?

A. Yes. Whether he operates regular through service to other points I do not know. He may haul cotton, haul fertilizer,

Q. You have never had occasion to investigate his service?

A. No, sir.

Q. Are there any other truck lines there?

A. No, that I recall. There may be some others in there. P. D. Miller was in there at one time.

Q. You have never used his service?

A. No, sir.

Q. You have never had any occasion to use a faster service, so you have never investigated his service?

A. No, sir.

Q. How about the Atlantic States Motor Line?

A. Didn't know there was any such line in existence.

Q. Although you need some faster service, you have never taken occasion to investigate the service that is now available—is that right?

A. Usually the people that furnish the service come [fol. 648] around and let you know about it. I don't know that they have ever come around to let me know their service is available, or not.

Q. None of them have ever called upon you to let you know their service is available?

A. The New South has.

Q. But you have never seen fit to investigate their service to see what it is?

A. I have to a limited extent.

Q. To what extent?

A. That is the best I can answer you.

Q. Between any particular points?

A. No, sir.

Q. Then you have never investigated their service between any two particular points?

A. No, sir.

Exam. McCaslin: Off the record.

(Short discussion, outside the record.)

Mr. Watkins: That is all.

The Chairman: Any further questions?

Mr. Abeles: None for me.

The Chairman: Did you say you have another witness?

Mr. Abeles: No, sir. That is all.

Chairman Darby: We will take a recess until 2.45 p. m.

(Whereupon, at 1.30 o'clock p. m., the hearing was recessed until 2.45 p. m.)

[fol. 649] Afternoon Session

Chairman Darby: The hearing will come to order.

Mr. Turner: I should like to cross examine Mr. Sauls now. If you recall, I offered to waive it, if necessary, in order to put on the other witnesses out of turn, but counsel agreed to their being put on without my doing that.

Mr. Abeles? Yes, sir.

Mr. Sauls, will you take the stand again, please?

C. H. Sauls testified further as follows:

Cross examination.

By Mr. Turner:

Q. I understand you to say that you are operating a truck now for $350 a month?

A. Yes.

Q. How many miles are you operating that truck?

A. 105 to 110 miles a day. A light truck.

Q. Does that $350 show a depreciation item and an overhead item, too?

A. It does.

Q. Does that cover insurance of any type?

A. I am not sure, Mr. Turner, whether the insurance is covered in that or not. I would not like to say.

Q. How many days a month does that operate?

A. Twenty-six. In other words, every day except Sunday or a legal holiday.

[fol. 650] Q. Have you calculated what, per mile, your cost would be on this proposed route?

A. I figured roughly it would be possibly around eleven cents a mile. I have not figured it out.

Q. You stated that the people along this route would prefer the proposed service, which would give them more expeditious handling to the Eastern markets?

A. Their carload business, yes.

Q. Just when would a shipment made now out of Norway, under the present schedule, reach the New York market?

A. On the present schedules, as now constituted, would reach the New York market at the same time as that proposed, but the closing time in the fields would be much earlier. It would not give them the day for loading.

Q. Where would the layover be now?

A. Well, the freight trains, one car lays over in Columbia and one in Savannah. It takes two cars to operate it.

Q. Where would the freight that you pick up now out of Norway in the middle of the day, where would it lay over?

A. Either at Savannah or Columbia.

Mr. Abeles: Which direction are you speaking of?

Mr. Turner: Going to the Eastern markets; that would be north.

By Mr. Turner:

Q. You would carry it either to Savannah and hold it there or to Columbia and hold it?

[fol. 651] A. That is right.

Q. What time does your local freight go north out of Norway now?

A. It is scheduled to pass Norway at 11.55 a. m.

Q. And under the new schedule it would leave there at what time?

A. Approximately ten to ten-thirty at night.

Q. Eleven hours' difference?

A. Yes, sir.

Q. A shipment now leaving Norway at eleven o'clock reaches Columbia about what time?

A. Anywhere from five to five-thirty.

Q. And does not get out of here until when?

A. Until after midnight. Leaves Columbia at midnight.

Q. Do you anticipate changing the schedule of that northbound train?

A. Yes, sir.

Q. You do anticipate changing it?

A. Yes, sir.

Q. Then, as a matter of fact, in order to render the same service to these people to the Eastern Markets you could set up your through schedule just as well as you are changing it to meet your proposed new arrangment?

A. I do not understand that question.

Q. You will have to change your present through sched-
[fol. 652] ule to the East in order to accommodate the people along this proposed route, under your proposed arrangement?

A. In this particular territory, yes.

Q. Then it is a matter of a change of schedule in order to furnish those people a more expeditious service to the East?

A. That is correct.

Q. And it follows, therefore, that if you now change your schedule and, instead of running your Eastern through freight out of here at midnight, you would run it at six o'clock in the afternoon, you would serve those people on carload business just as well as you propose doing under this arrangement? Is that right, or not?

A. That is correct as to the carload business, with the exception that with the numerous stops at small stations I could not make the schedule.

Q. You do come in now, you said, about five o'clock?

A. In the afternoon, yes.

Q. The real difference in the arrival time in the Eastern markets now of merchandise shipped along this route we are talking about is the delay that is occasioned in Columbia by reason of the failure to make a connection with your through trains?

A. We are not figuring on the carload business as to merchandise, Mr. Turner. We are figuring on the vegetables and forest products and not merchandise, because
[fol. 653] there is no merchandise to speak of from this territory.

Q. When you speak of speeding up as one of the reasons for justifying this truck line you speak of speeding up the service to these people. In order to speed up the service you have got to change your through schedules to the East?

A. No, we shall not change any of our through schedules to the East. It is only a matter of speeding up or changing the train service in this particular territory to match up with the year-round advertised through schedules to the Eastern points or markets.

Q. Then did I misunderstand you a moment ago? I understood that you said you intended, if this authority

were granted, to change your midnight through freight train out of Columbia to the Eastern markets.

A. No, sir.

Q. You do not intend to do that?

A. No, sir.

Q. Do you then tell me that a freight train through Norway at ten-thirty at night would make connection with a midnight train from Columbia?

A. Yes, sir.

Q. That is what you propose?

A. I said in my statement that the train left Columbia after midnight.

Q. How long after midnight?

[fol. 655] A. They will leave on direct connections with the train from the South. The crews change at Columbia, which is the dividing point between the South Carolina Division and the North Carolina Division, and are therefore called to make direct connections on figures given the yard by the train dispatchers.

Q. They do not make direct connection now, do they?

A. Not at this time, because our train comes in in the early afternoon.

Q. So this is the proposed arrangement of making direct connections?

A. That is correct.

Q. How do they get your train orders, now, that you speak of?

A. I did not speak of train orders; I spoke of figures by the train dispatchers.

Q. How do they get those now?

A. It is not now necessary, since the freight arrives in the terminal in the early afternoon, where it will lay over until the train is called for the North.

Q. Does that northbound train make up here, Mr. Sauls?

A. Yes, sir.

Q. It is not dependent upon any other schedule other than this schedule from the South?

A. That is all.

[fol. 655] Q. You made a statement, I believe, in answer to a question of Mr. Watkins as to why you would not operate this line from Columbia instead of from Gaston, did you, or not?

A. I think I answered that question.

Q. Did you not answer a similar question with reference to running it from Savannah instead of out of Garnett?

A. No, sir.

Q. Will you answer that?

A. What is the question, please?

Q. Why is the line operated from Garnett instead of from Savannah?

A. Because the principal business is done in the territory between Estill and Swansea, there being no reasons for operating it out of Savannah or Columbia, inasmuch as we shall have set-out cars at the principal points, as enumerated this morning.

Q. Neither Garnett or Gaston is what you call a transfer point, is it?

A. As a matter of fact, the truck is scheduled to leave Estill, but neither of those is a transfer point.

Q. Is there any difference, from the standpoint of the handling of freight, in handling it from a nontransfer point and from a transfer point?

A. None whatever. It takes the same labor to handle it at one point as it does at another.

[fol. 656] Q. So, then, it is just as economically sound and just as convenient and speedy for the railroad to run this truck line from nontransfer points as it would be run from transfer points such as Columbia and Savannah?

A. For the purpose for which this truck is to be operated, yes, sir. More so.

Q. Would you mind telling us what was the principal commodity shipped out of Gifford?

A. The principal commodity shipped out of Gifford is peas that go to various places over the country for planting. In other words, the people at that point raise a lot of peas of various kinds which they ship out over the country.

Q. For seed?

A. Seed.

Q. Are those shipped in carload lots, principally, or less than carload?

A. Less than carload. In fact, I think all of them are less than carload.

Q. If you have the exact tonnage that was hauled into the other set-out points, would you give us that?—Swansea, North, and Denmark.

A. Swansea had 301 tons inbound, 184 outbound, a total of 485. North, 539 tons inbound, 447 outbound, total 986. Denmark, 172 inbound, 103 outbound, a total of 275. That is tonnage only for Denmark proper. This car will also con-
[fol. 657] tain less-than-carload freight for delivery to the Southern Railroad and the A. C. L. in interchanging. Fairfax, 132 tons inbound, 105 outbound, a total of 237. And this car will also contain freight to be delivered to the C. & W. C. Railroad, the interchangers.

Q. Does that include only less-than-carload freight?

A. That is true, yes.

Q. I believe you said with certain exceptions as to cotton and other things?

A. I believe I said on the outbound movement this tonnage did include the cotton which moved on LCL rates at times.

Q. I understood your testimony to be that this truck line would not pick up any freight other than that now offered to the railroad at its regular stations?

A. That is correct, yes.

Q. Then, Mr. Sauls, I ask you if the public which ships on this truck line will be given any advantage over the present operation which you have?

Mr. Abeles: Mr. Chairman, it seems to me that Mr. Sauls dwelt at considerable length on that very question on direct examination, and while I do not want to interrupt or foreclose counsel for the intervenors, I think what Mr. Sauls would say in response to that question would be purely repetitious.

Mr. Turner: I should like to have it answered.

[fol. 658] The Witness: That question was not asked.

Mr. Abeles: Will you repeat the question? Perhaps I misunderstood it.

Mr. Turner: Read it.

(The reporter reads the question, as follows: "Then, Mr. Sauls, I ask you if the public which ships on this truck line will be given any advantage over the present operation which you have?")

Mr. Abeles: By that question you mean the shippers using the truck service?

Mr. Turner: If the witness does not understand it, he may state so, and I will ask it over again.

Mr. Abeles: I want the question perfectly clear in my own mind, so that I may be sure the witness understands it. I think I have the right, as counsel, to understand the question.

The Witness: You said outbound, didn't you?

Mr. Turner: Either way.

The Witness: Outbound there will be no advantages or speeding up of less than carload freight. Inbound, it will be delivered considerably earlier than by present train service.

Q. Would that apply to every point—that there will be quicker service on inbound freight?

A. Yes, sir, to every station. Not to the same extent. [fol. 659] Q. In other words, a person who had a shipment originating in Savannah just in time for your present train might actually have it lie over on the proposed schedule? Isn't that right?

A. That would be right if we received anything early in the morning, yes, sir.

Q. Would the same thing be true southbound from Columbia?

A. We could not, as a matter of fact, receive freight early enough at our warehouse to get it out on the morning train in either direction, as the trains are scheduled to depart from these terminals before the warehouse is actually opened.

Q. On shipments, we will say, from Norway, that shipment presently might make the morning train in Columbia, is that not right?

A. It might do that, yes, sir.

Q. And under the proposed plan it would be carried by the truck to a set-off point and then loaded at night—is that not so?

A. That is correct, yes, sir.

Q. And then a shipment by these people on this particular route might by your proposed plan be delayed?

A. No. Because the train gets into the terminal too late for delivery on that particular day, anyway, and under this plan it would still be at the terminal for next morning's [fol. 660] delivery.

Q. How about the man that ships from Norway north?

A. That is a different question. There might be some speeding up in that.

Q. So it is a matter that some may be benefited and some may not be benefited, is it not?

A. Every place will be *eb*nefited on its regular inbound business from the transfer points. Others may get the same service as at present.

Q. And some may get a delayed service?

A. Slightly.

Q. In effect, it amounts to improving the present rail service?

A. It amounts to improving the present rail service on less-than-carload freight inbound, but the big improvement that we are seeking is the advantages to be gained on the carload business outbound that is not merchandise.

Q. One other question, and I am through. On this big shipment out of Gifford, do you know whether or not you operate any special trains handling that?

A. We do not.

Q. Do you not operate some special trains on this route during the seasonal movement?

A. We run special trains during the heavy movement of watermelons when one train will not accommodate the [fol. 661] shipments offered.

Q. What is the principal watermelon-shipping point?

A. All the way from Sycamore to Estill.

Q. What is the watermelon season?

A. It usually starts around the first day of July. This year it will be a little later.

Mr. Turner: That is all.

Redirect examination.

By Mr. Abeles:

Q. Mr. Sauls, it was at sometime during your cross-examination this morning that you were asked the number of train stops which would be eliminated by the truck service. How many did you say could be done away with?

A. I estimated fourteen. There are fifteen stations involved, with the possibility of thirty stops, but inasmuch as the business is so light in a number of places I estimated it at fourteen, which I think would be correct.

Q. That is less than fifty per cent of the total possibility?

A. Yes, sir.

Q. I think you gave you estimation of the savings in fuel which would result from those eliminations. What was that figure, approximately?

A. At $2 per stop, for 26 days in the month, it would be $728.

[fol. 662] Q. Is $2.00 a stop the standard used in estimating fuel consumption?

A. That is less than the standard.

Q. Less than the standard?

A. Less than that quoted by the American Association of Railroads.

Q. How much do you estimate your truck service would cost a month?

A. I said, roughly, around $350. It might be a little more.

Q. What does that amount to per mile of operation?

A. I think, roughly, around eleven cents a mile. That is what they are costing now in other territories.

Q. Did you mention where that other operation is?

A. No, sir.

Q. Will you give it now?

A. Between Lyons and Rhine, Georgia, in the Alabama District.

Q. Is there any essential difference in the conditions which will surround the Garnett-Gaston service from those that obtain between Lyons and Rhine?

A. The only difference is that there will be a little more mileage on this truck. I figure the tonnage to be handled will be less.

Q. Then in your opinion, Mr. Sauls, the savings to be ac-[fol. 663] complished by these savings in train-transportation costs will more than offset the additional cost of the truck service?

A. Since figuring it out, yes, sir.

Q. Mr. Turner asked you whether any change in train service was contemplated in connection with the proposal here under consideration. I am not sure that you made it clear for the record just what that change would be.

A. The only change in train service was, as stated this morning, a change of Trains 75 and 76, now operating between Columbia, South Carolina, and Savannah, Georgia, from a day service to a night service.

Q. And no change is contemplated north of Columbia?

A. None that I know of.

Q. You also stated, in response to a question from Mr. Turner, that there would be no benefit to outbound shipments using this truck service. Is that correct?

A. Yes, sir.

Q. Let me ask you about a shipment from Olar to Denmark, a distance of approximately ten miles, I believe. Wouldn't that service be improved by truck?

A. It would if it were delivered at the station in time. However, with the early arrival of the truck, I don't think any shipments would be delivered to the station early enough for delivery on the same day.

[fol. 664] Q. In any case in which a shipment is delivered at the station before the truck passes that station, the truck would pick it up, would it not?

A. That is right.

Q. And if the shipment went from one non-set-off station to another, in such a case the truck, of course, would take it, would it not?

A. That is right.

Q. And in those circumstances there would be some benefit to the outbound shipment?

A. Yes, some three or four hours, in most cases.

Mr. Abeles: That is all, sir.

Mr. Turner: I want to ask two more questions.

Chairman Darby: Yes, sir.

Recross examination.

By Mr. Turner:

Q. Mr. Sauls, how much would you estimate of the tonnage you have given us (less-than-carload shipments) is handled by special seasonal trains—special produce trains?

A. No less-than-carload tonnage would be handled by those trains.

Q. None of this tonnage you have given us would be handled by those trains?

A. No. They are put on simply to handle the perishable traffic.

[fol. 665] Q. What would you say about the carload tonnage traffic on this line?

A. During the perishable season probably 100 cars a day.

Q. In the nonperishable season?

A. In the nonperishable season, probably eight to ten.

Q. Do the carload shipments go to any particular points as against other points on this route?

A. I do not understand that question.

Q. What are the largest shipping points or receiving points in this territory?

A. Estill is really the largest shipping point in the nonperishable season.

Q. And that would receive what proportion of the inbound freight during the nonperishable season?

A. I am speaking now of the outbound shipment, eight to ten cars a day. It would probably run 50 per cent.

Q. Assuming that the tonnage you have given us of less-than-carload shipments were equally distributed over the entire year, have you made a calculation to determine whether or not one truck could handle that?

A. Yes, sir.

Q. Could it?

A. Yes, sir.

Q. In estimating that you could operate your truck along this route for $350 a month, have you or have you not [fol. 666] calculated the mileage which you propose to operate?

A. Yes, I have calculated the mileage.

Q. How many days do you expect to operate this truck?

A. Daily except Sunday and national legal holidays.

Q. What do you calculate the mileage to be per month?

A. I had not figured it per month; it is about 130 miles per day.

Q. Is the distance of the route 65 miles?

A. Eighty-five miles.

Q. Does he not make a round trip each day?

A. Wait a minute there. I was figuring in my head. I was wrong; it would be 170.

Q. You estimate it would cost you between ten and eleven cents a mile to operate?

A. Yes, sir.

Q. Do you know what the Bureau of Standards calculates as the cost to operate a truck in this kind of commerce?

A. I do not.

Mr. Turner: All right, sir.

The Chairman: Any further questions?

Mr. Abeles: Nothing more.

The Chairman: You may come down, Mr. Sauls.

Mr. Abeles: Mr. Stanley next.

Mr. Chairman, the testimony that Mr. Stanley will now give I understand will pertain to both the proceeding in [fol. 667] Docket No. MC 86687 and that in Docket No. MC 86687, Sub No. 1.

W. L. STANLEY was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Stanley, please state your name, residence, and occupation.

A. W. L. Stanley; residence, Atlanta, Georgia; Vice-president, Seaboard Air Line Railway Company, and Chief Public Relations Officer for the Receivers of that company.

Q. Mr. Stanley, are you the official of the Receivers and of the corporation charged with the responsibility of framing the policy of the railway with respect to the establishment of auxiliary truck service.

A. In cooperation with the Receivers and other officers of the company, yes.

Q. Will you state now the general purpose and policy that has been followed by the Receivers and the company in establishing this auxiliary truck service?

A. We have studied various sections of the railroad, our objectives being, first, to improve the handling of less-than-carload freight and to expedite its movement and, second, to enable us to expedite the movement of carload freight through the relieving of our local freight crews of the handling of less-than-carload business. Those two things have [fol. 668] been the principal objectives which we have had.

Q. Have we any purpose, in establishing these services, to supplant our rail-transportation operations or service?

A. Absolutely no, for the reason that there is no transportation in the world that is as inexpensive as railroad transportation, provided you have a sufficient volume of business.

Q. Mr. Stanley, where, throughout the Seaboard system, are truck services operated in conjunction with rail service other than at the points involved in these proceedings.

A. Before I answer that question I should like to amplify my answer to the first question by saying that our principal purpose in all of these studies and in the inauguration of these truck lines——

Mr. Turner: Do I understand that this testimony is confined to these two applications?

Mr. Abeles: Yes, sir.

Mr. Turner: Then, as I understand it, the testimony which Mr. Stanley is about to give is irrelevant.

The Witness: I simply wanted to say that our chief objective was to co-ordinate rail and truck service. What I mean by that, of course, is obvious—haul partly by rail and partly by truck. Now, the question that you asked me, Mr. Abeles, was what?

By Mr. Abeles:

Q. On what other parts of the system, other than the lines [fol. 669] involved in these proceedings, are we operating truck service, and a brief history of those operations.

A. The first service of this character that we established was between Hamlet and Monroe, North Carolina, a distance of 54 miles, which was put on about five years ago. The exact date I do not know. We then established a service between Drifton and Monticello, Florida, paralleling a branch line between those places, a distance of about four miles. On January 1, 1935, we established a truck service between Morriston and Waldo, Florida, approximately 55 miles in length. At the same time we put on one between Tampa and Brooksville, Florida, a distance of 55 miles. Subsequently, on dates that I do not recall but I think all during the year 1935 or probably one or two of them in 1936, we established a service from Jacksonville to Wildwood, Florida, and subsequently extended it to Tampa, Florida, a distance of 212 miles; we put on one between Fernandina and Yulee, Florida, a distance of 12 miles, also paralleling a branch line; and in the summer of 1936, as I now recall it, we established a truck service between Rhine and Lyons, Georgia, a distance of 58 miles. The total truck service that we now have in operation covers 450 miles of highway.

Q. And that is your experience in truck operation—extending over a five-year period, I believe you said?

[fol. 670] A. Yes, sir, beginning about five years ago.

Q. Are all the truck services which have been instituted still in service?

A. Yes, sir, they are.

Q. Have they fulfilled the purpose for which they were intended?

A. Yes, sir.

Q. Has the Seaboard, to your knowledge, ever inaugurated a truck service which has been subsequently withdrawn?

A. I do not know of any service that has been withdrawn except perhaps one that we had on several years ago from Norlina to Hamlet, that was put on during the time when we had a very limited number of passenger trains, and primarily for the purpose of handling United States mail. Norlina and Hamlet both are within the State of North Carolina.

Q. And that, you say, was a limited service?

A. A limited service, yes, sir.

Q. From our past experience, do you feel that the Seaboard staff organization is fully equipped to conduct truck service efficiently?

A. Yes, sir, we think that we have successfully done it so far, and we think we know how to do it.

Q. Have you a copy of the annual report of the Seaboard for the year 1936?

A. Yes, sir.

[fol. 671] Q. Will you state for the record the figures shown by the income account in that statement for that year?

A. The total railway operating revenue of the Seaboard system for the year 1936 was $38,346,055.37. After the payment of operating expenses and taxes we had left a net railway operating income of $2,920,582.99.

Q. We had some other income, did we not?

A. We had income from other sources of $356,168.24, making a gross income of $3,276,751.23 available for the payment of interest and other fixed charges.

Q. That gross income figure represents income from which have been deducted all expenses except fixed charges, does it not?

A. It is what is left after you have paid operating expenses and taxes.

Q. Does you annual report show the investment account of the railway?

A. It does.

Q. Will you please state what that is?

A. Shown on page 16, the investment in road and equipment as of December 31, 1936, is $244,941,795.65. Total assets were $280,121,079.25.

Q. From the statement that you have just read, is there any doubt of the financial ability of the applicants to establish the truck service here involved?

[fol. 672] A. Absolutely none. Certainly no more than there might be any doubt as to the ability of the Receivers or the railroad to pay the operating expenses of their rail lines.

Q. The costs involved are comparatively insignificant in comparison with any other major rail operation, are they not?

A. Negative, yes, sir.

Q. From your experience with the truck operations which have been conducted by the railway up to the present time, is it your opinion that the proposal which we have here under consideration will justify itself from a financial standpoint?

A. It is.

Q. Is there anything else you care to say, Mr. Stanley?

A. I might say this—that I have kept in very close touch with the results of these operations which we have had on various parts of the railroad, and I know that they have had two very outstanding results: First, the expediting of less-than-carload freight delivered to the railroad for transportation and, second, the hastening of the movement of carload freight as a result of local trains' being relieved from doing that work, and, in many instances, the ability of the local freights, operating at night, to switch industries and not disturb the operation of the plants during the daytime.

Q. Limited in the manner which we propose, have you [fol. 673] been able to form an opinion upon the effect of the truck service which we are here proposing upon independent competitive motor carriers?

A. Based upon a study which I made of two operations of ours in Florida, I have. Those two operations are the ones that I referred to a while ago, between Morriston and Waldo, Florida, and between Tampa and Brooksville,

Florida, and which were established on January 1, 1935. The reports of our competitors, the independent common-carrier-truck operators in that same territory, for the years 1935 and 1936, made to the Florida Railroad Commission, showed that their earnings increased after the inauguration of our service. I am speaking of their total earnings.

Q. You heard the testimony of Mr. Garner and Dr. McLeod this morning, stating their attitude towards this proposal, did you not?

A. I did.

Q. Will you comment on that testimony?

A. I would not be so foolhardy as to make the statement that under no conditions would the Timmonsville branch of the railroad be abandoned, but I will state very positively that in the proposal to inaugurate this service no such possibility has been considered, nor is it sought to be undertaken with a view to bringing about that result. If I may give my opinion about the result of this operation, I would like [fol. 674] to say this. The major part of the business that we handle to Timmonsville is carload business. Without having the exact figures, the less-than-carload business represents a very small percentage of the total business which we do. The earnings in that territory are very, very thin. Trains will have to continue to handle the carload business, because under no circumstances or conditions that I can conceive of would we ever undertake to substitute a truck for train service to handle carload business. Therefore, if we may increase our revenue, as we hope we may do by the use of trucks on less-than-carload business, it seems that it would have the effect of relieving any apprehension as to the possibility of tearing up those rail lines, because we would have the augmented less-than-carload business to add to the carload business which we may continue to handle.

Q. Is there anything further that you can say?

A. I don't know of anything. I am anxious to quit.

Cross-examination.

By Mr. Watkins:

Q. Do you contemplate any additional traffic moving over your line by this proposed new service?

A. We hope very much that we shall be able to get some additional business.

Q. Do you think that that additional business will be taken from competitive transportation agencies?

[fol. 675] A. Well, now, it depends altogether, Mr. Watkins, upon what you mean by competitive transportation agencies.

Q. Existing transportation agencies.

A. I don't know whether what you and I term a fly-by-night operation by truck that you can hire a transportation agency or not. Probably we shall get some of that business. My own judgment is that it will probably result in merchants who prefer patronizing the railroad discontinuing, to some extent, the use of their own trucks if they can get as prompt delivery, by the co-ordinated rail and truck service as they can get by their own service.

Q. I understood the testimony in this series of cases to indicate that about 85 per cent of the traffic which would move over this service originated at four distant points. Do you think that it is true that that would be moving in private trucks today?

A. Well, I know that those private trucks are rather extensively used.

Q. You do not think that some person would use a private truck to move freight from St. Louis, Missouri, or Chicago, Illinois, to Denmark and Norway, do you?

A. No, I suppose he would have to get some way to cross the ocean.

Q. I am speaking of South Carolina. Then, to the extent that your business would increase from those more distant [fol. 676] points, the traffic would not be diverted from private carrier but from some form of common carrier operation, either by rail or motor truck?

A. Well, I doubt, Mr. Watkins (this is my opinion only) if you have got from many of the large shipping points, especially in the West—Chicago and St. Louis, through truckage service in common carriage in some established line. The freight that we get, of course, comes from all over the United States. It concentrates at some point on our line, where it goes through the funnel—or, rather, in the reverse order—and is distributed out to the smaller places. I may say this for you, because I am trying to draw a perfectly fair picture of this situation. I do not think anybody knows exactly the extent of the inroads which the truck business has made upon the business of the railroads. I do know that in Florida, as I stated in another case yester-

day, for the five-year period from 1930 to 1935 the earnings of the common-carrier truck lines in that State increased 75 per cent, while the earnings of the railroads decreased 33 per cent. Now, I have given you my opinion, that we have a right to every legal, proper way to try, so long as it is in the public interest, to bring back some of that business to the railroads.

Q. You spoke of knowing generally the effect of this coordinated truck and rail transportation. Are there inde-
[fol. 677] pendent truck-line competitors of yours? Will you please state the names of the independent truck-line competitors along the routes that are here involved?

A. I do not know them.

Q. Then how do you know the effect upon them, if you do not know them?

A. I do not know the effect upon them by these particular lines, because we have not established them.

Q. Take to Hamlet, for instance.

A. I do not know the effect on those particular people in there. I used the situation in Florida, which I had studied, as an illustration.

Q. But you do not know the effect upon the operations of your competing lines of your operation from Monroe to Hamlet, which has been in effect about five years?

A. No. I think that the Frederickson line and the Horton line, and perhaps others whose names I do not recall, are in that territory. The trouble I have had about that is this. To be frank with you, I tried to make some study of it; but I can not find in the reports of the public service commission for North Carolina, except for the last two or three years, any statements of the gross earnings in North Carolina of those lines.

Q. Have you made any study of the number of truck operations directly competitive with the Seaboard Air Line
[fol. 678] Railroad?

A. Not except as I might take up each particular case at the time that we sought to put on our service; and I even have not extended that study to the point of developing our competitors' operations here, because our goal is to coordinate our rail and truck service, which we would want to do regardless of whether there is a competitor in the territory or not.

Q. So for the purpose of this series of cases, you made no survey of the existing motor-carrier facilities paralleling your lines?

A. Not as a preliminary to the determination to establish this service.

Q. Nor as a preliminary to testifying in the case?

A. Well, I did not think it was necessary to have it in the case.

Q. I believe you started out with the premise that the reason why the Seaboard Air Line Railway is interested in this type of service is because they think there should be a co-ordinated truck and rail service, where the traffic would move partly by rail and partly by truck?

A. Where the major portion of the traffic would be moving partly by rail and partly by truck.

Q. Would you be willing for your applications to be limited to your handling this traffic partly by truck and [fol. 679] partly by rail?

A. I would not, because it would destroy the main purpose of our application, which is to run these freight trains at night and enable us also to take care of LCL freight from station to station.

Exam. McCaslin: Off the record.

(Remarks by the Examiner, outside the record.)

Chairman Darby: On the record. Proceed, Mr. Watkins.

By Mr. Watkins:

Q. I understand that the Seaboard Air Line Railway has now pending before the Interstate Commerce Commission eight applications for motor-carrier operations which, together with a presently established operation, practically cover the lines of the Seaboard from Richmond to the Georgia line and from Wilmington to Rutherfordton. Would the applicants be willing that the certificates granted under these applications be so limited as to prevent joint movement on any two of these proposed operations wholly by motor carrier?

A. We would not be willing to such an arrangement. As a matter of fact, Mr. Watkins (to clear up the record), there is a good deal of the territory in Virginia and in South Carolina and some in North Carolina that is not

covered by any application pending before the Interstate Commerce Commission.

Q. My question was referring only to that territory cov-
[fol. 680] ered by the eight applications and to the Monroe-Hamlet service which is already in existence. Is your answer still the same?

A. Yes, sir. I could give my reason for it, if you want me to. It has been explained in another case, but I might state it again, for the purpose of the record. If we had a shipment going from some point between Hamlet and Columbia to some point between Hamlet and Raleigh, where we do rearrange the train service, we should certainly not want to be put in a position where we could not transfer that from one truck at Hamlet, operating from the Columbia territory, to another truck at Hamlet, operating into the Raleigh territory.

Q. You want that possibility of through movement by motor carrier entirely left open?

A. I should rather refer to it as a local movement than as a through movement, because it is local movement I have in mind.

Q. The reason I refer to it as a through movement is because you have seen fit to divide your applications. For that reason I refer to it as a through movement.

A. No; I can explain how that happened. We have on the Seaboard Air Line Railway six operating divisions, in charge of six different superintendents. To all intents and purposes, except for the purpose of co-ordinating [fol. 681] through movements, those territories represent little railroads of their own. Now, in making up these applications for truck certificates, they were studied in respect to the several divisions of the railroad—what would be most desirable on those divisions, and especially in respect to their local situations, and with no idea on earth of co-ordinating those several movements except where they might happen to match up with each other.

Q. Do I understand that each of these applications represents truck operation in separate divisions of the Seaboard?

A. Every one of the eight that you spoke of; every one of them, as I recall it now, except the one from Hamlet to Columbia, that involves two subsidiary lines of the Seaboard. I think every one of them are separate divisions of the Seaboard.

Q. The McBee operation?

A. That is in the South Carolina Division.

Q. That is in the same division as the Hamlet to Columbia operation, is it not?

A. The McBee-Sumter operation is in the South Carolina Division, which is under Mr. Sauls' jurisdiction; and the Hamlet-Columbia is in the North Carolina Division, which is under Mr. Rogers' jurisdiction.

Q. What about the Hamlet to Raleigh operation?

A. On the North Carolina Division.

[fol. 682] Q. Under Mr. Rogers?

A. Yes, sir.

Q. And the Wilmington to Hamlet?

A. Is on the North Carolina Division, under Mr. Rogers.

Q. And the Monroe to Rutherfordton?

A. Is on the North Carolina Division, under Mr. Rogers.

Q. And the Raleigh-Henderson-Richmond?

A. Is on the Virginia Division, under Superintendent Terrell.

Q. And your Hamlet to Monroe operation?

A. Is on the North Carolina Division, under Mr. Rogers.

Q. What is the schedule of your truck on the Hamlet-Monroe run today?

A. I don't know, to be frank with you.

Q. How long has it been since the Seaboard has been able to earn sufficient money to pay its interest charges?

A. Since it was able to pay the interest on its indebtedness?

Q. Yes.

A. The Seaboard went into the hands of receivers on the 26th day of December, 1930.

Q. Has it ever been able to earn money enough to pay its interest charges since the receivership?

A. No, sir.

[fol. 683] Q. And had not for a few years prior thereto?

A. I would not say a few years. I would say the year 1930 was the first year for quite a period of years that we failed to earn our fixed charges.

Q. So, if the inauguration of this truck service costs the railroad any money, it would be taken from the sum that would be otherwise used to pay the fixed charges?

A. It will, according to our experience, and based upon our studies, not cost us any money but perhaps enable us to effect economies that will represent a saving.

Q. I am speaking now of the initial investment, to begin the service.

Q. You mean the cost of the trucks?

A. Yes, sir.

A. Well, my answer to it is the same. Those are just a part of the railroad facilities, those trucks—just as we would purchase a new car or a new engine.

Q. When you buy equipment you are taking away money that, if you did not buy that equipment, would go toward paying fixed charges?

A. And if we did not buy any equipment we would not be able to handle our business.

Q. Mr. Stanley, what is the difference between what you have earned for the past year and the fixed charges?

A. It is shown on the first page here, for 1936 (page 3, [fol. 684] Exhibit 1). The net deficit was $6,097,461.95.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Turner:

Q. You say that railroads are the cheapest form of transportation where volume is concerned?

A. Where you have the volume that is true.

Q. Is that true even as compared to water transportation?

A. I was speaking of land transportation.

Q. You mean rail compared with truck and airplane transportation?

A. Oh, we haven't gotten up in the air yet, but I think we are going that way.

Q. Do the Receivers of the Seaboard operate these truck operations where they have been inaugurated, or are they operated by other companies for the Receivers?

A. All of them are operated by the Receivers.

Q. Do you think you can operate a truck for ten cents a mile?

A. I don't think I am an expert on that, Mr. Turner. I think it varies with the character of the roads, the size

of the truck, the general terrain of the country, and other factors.

Q. You don't believe that you can operate one on glass for ten cents a mile, do you?

A. I really do not know. To tell you the truth, I have [fol. 685] tried to find out; but if anybody in this country knows exactly what it costs to operate a truck I have not found that gentleman.

Q. Do you know whether Mr. Manship, who testified before lunch, actually operates his business on Seaboard property, or not?

Mr. Abeles: I have not the slightest objection to Mr. Stanley's answering that question, but if Mr. Turner is going into every possible line of inquiry it will be endless. I should like to ask the Chairman to confine Mr. Turner's cross-examination to the testimony which Mr. Stanley has put in the record.

Exam. McCaslin: That is proper.

Chairman Darby: Mr. Turner, Mr. Stanley could only be cross-examined on what he has testified, and I do not think it is proper to cross-examine him upon some other witness's testimony.

Mr. Turner: The question of the credibility of Mr. Manship, who is a witness for the applicants, is a pertinent issue in this case. If he leases lands from or operates on lands owned or controlled by the Seaboard, it goes toward his credibility. I asked him if he knew.

The Witness: To be frank with you, I do not know. In fact, I do not think I ever saw the gentleman until this hearing.

[fol. 686] Mr. Turner: That is all.

Cross-examination.

By Mr. Watkins:

Q. Mr. Stanley, upon what do you base the authority of the Receivers to ask permission of the Commission to begin this motor-carrier operation?

A. The Receivers were directed by the Court to do whatever might be necessary to conserve and operate these properties.

Q. And that is the basis?

A. That is one.

Q. Have you any specific order of the Court allowing you to apply to the Interstate Commerce Commission for authority to operate motor vehicles?

A. I know of no specific order of the Court directing us to seek authority to operate motor vehicles.

Chairman Darby: Any other questions?

Mr. Abeles: That is all.

Mr. Abeles: We offer in evidence the annual report of the Seaboard Air Line Railway and its Receivers for the fiscal year ended December 31, 1936, to which Mr. Stanley referred in his testimony, and ask that it be received as an exhibit.

The Chairman: Without objection it is so ordered, and it will be received in evidence and marked Exhibit No. 1.

(Exhibit No. 1, Witness Stanley, received in evidence.)

[fol. 687] Mr. Abeles: I assume that the Commission desires two additional copies of that exhibit?

Exam. McCaslin: I believe that it is necessary to have two more.

Mr. Abeles: I desire to offer in evidence, also, the evidentiary portions of the application in this docket.

Chairman Darby: They will be received as evidence.

Mr. Abeles: That, Mr. Chairman, concludes our testimony in chief upon the hearing of Docket 86687 and Mr. Stanley's testimony in Docket 86687 and 86687 Sub. No. 1.

The Chairman: We will take a few moments' recess, gentlemen.

(Whereupon a recess of ten minutes was taken.)

Chairman Darby: Let's resume, gentlemen. Proceed, Mr. Abeles.

Mr. Abeles: I am now calling Mr. Sauls to testify upon the application in Docket MC 86687, Sub. No. 1, covering the proposed operation between McBee and Sumter, South Carolina.

C. H. Sauls was recalled and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Sauls, will you describe the operation which you propose to establish in this proceeding?

A. We are proposing to put on a truck to leave McBee, South Carolina, at 6:00 a. m., going through Hartsville, then [fol. 688] to Timmonsville, then to Sumter, back to Bishopville, then to Darlington, and back to McBee, to handle the less-than-carload freight that is now being moved by train and that will be at McBee for transfer to the truck.

Q. And that truck will leave when, did you say?

A. Six a. m.

Q. And the operation will consume how long?

A. I figure around six hours.

Q. Returning to McBee at about noon?

A. At about noon.

Q. What is the distance of that route?

A. Approximately 134 miles.

Q. How often do you propose furnishing this service?

A. Daily except Sunday and national legal holidays.

Q. Will you describe the purpose of establishing this service?

A. The purpose of establishing this particular service is to make deliveries at those points during the early morning hours, whereas we can not now make them until noon, or later in many cases, by train.

Q. What is the schedule of your present train service?

A. The present train service is due to leave McBee at 9:55 a. m., arriving in Hartsville at 10:50 a. m.; leave Hartsville for Timmonsville at 10:55 a. m.; arriving at Timmonsville at 12:10 p. m. Leaving Hartsville for Sumter at 11:15 [fol. 689] a. m.; arriving at Sumter at 1:15 p. m. And leaving Hartsville for Darlington at 11:00 a. m., arriving at Darlington at 11:40 a. m.

Q. Those services from Hartsville to Darlington, Timmonsville, and Sumter are separate operations, are they not?

A. They are separate operations, all of which are mixed trains and handle United States mail and express.

Q. Does the proposed truck service reach any station or territory not now served by rail?

A. No, sir.

Q. You stated that the purpose of the establishment of the service was to expedite less-carload deliveries, did you not?

A. Yes, sir.

Q. Will you please illustrate how that will be accomplished?

A. Take a shipment arriving at McBee in a set-out car for this territory. It would now leave McBee at 9:55 a. m. and would arrive at Sumter at 1:15 p. m. or later, while the same freight moved by truck would leave McBee at 6:00 a. m. and arrive at Sumter at 8:05 a. m.

Q. Approximately three and a half hours earlier, is it not?

A. That is about five and a half hours earlier.

Q. Will there be a corresponding improvement to Timmonsville, Hartsville, and other points on the line?

A. Yes, sir.

[fol. 690] Q. Will there be any through service performed by the truck which we shall establish on the McBee-Sumter route and any other truck route now operated by the railway?

A. There will be none and no connection with any now operated by the railroad; but there might be an occasional shipment, if the other service is established between Hamlet and Columbia, that would catch this truck.

Q. That would catch which truck, the McBee-Sumter truck or the Hamlet-Columbia truck?

A. The McBee-Sumter truck.

Q. You are speaking, then of inbound shipments?

A. Only.

Q. Will there be any effect upon outbound movements?

A. There will not.

Q. Then the primary purpose of this, as I understand it, is to expedite the delivery of inbound less-carload shipments. Is that correct?

A. That is correct.

Q. Have you reason to believe, Mr. Sauls, that this service is desired and needed in the territory involved?

A. Absolutely.

Q. Please explain that a little further.

A. The receivers of freight in this territory frequently complain of the late deliveries, and under the existing amount of traffic handled over these branch lines and the [fol. 691] necessity for making connection with the main-line fast and express trains we can not change the schedule now existing, and it is therefore the only way that we can improve the service without putting on additional trains.

Q. Is there sufficient traffic in that territory to justify additional train service?

A. There is not.

Q. Would additional train service be costly?

A. Very costly.

Q. Can you establish this truck service for less than you could the train service?

A. Very much less.

Q. Is there any purpose in this proposal to supplant existing rail service with truck service or to curtail in any way the rail service we now render?

A. There is not, as we have a minimum of service on those branch lines now.

Q. Do you propose to carry anything but less-carload shipments in these trucks?

A. We do not.

Q. Is there a substantial movement of carload shipments over the McBee-Sumter rail line?

A. Well, there is a very good movement of carload business into and out of Hartsville, Darlington, Florence, Pamplico, and to a lesser degree on the other lines.

[fol. 692] Q. Is there any movement of less-carload traffic to points north of McBee on the main line of the Seaboard between Hamlet and Columbia or from points north of Hamlet moving into the McBee-Sumter territory?

A. Very little, with the exception of the long-haul business that comes into Hamlet Transfer in the regular transfer cars.

Q. At what time is the train from Hamlet to Columbia scheduled to pass McBee?

A. I do not have the exact figures, but it should be about 8:30 p. m.

Q. Then as to traffic received from that train, the effect of this proposed operation would be merely, as I understand it, to expedite the deliveries the following morning?

A. That is correct.

Q. As long as carload shipments continue to move into the McBee-Sumter territory, would it be possible for us to abandon train service?

A. It would not. There is a carload business moved each and every work day.

Q. Then as long as carload shipments are moving into this territory train service would be indispensable?

A. Absolutely.

Q. You have already stated, I believe, that that train service is at a minimum?

[fol. 693] A. Yes, sir.

Q. So that there could be no curtailment.

A. No curtailment.

Mr. Abeles: That is all, Mr. Chairman.

Chairman Darby: Any questions?

Cross-examination.

By Mr. Watkins:

Q. Mr. Sauls, when did you say the rail service leaves McBee?

A. 9.55 a. m.

Q. There is just one train a day?

A. That is all.

Q. And arrives at Sumter—is that your final point?

A. Yes. At 1.15 p. m.

Q. And your proposed service by truck would leave when?

A. Six a. m.

Q. And arrive at destination when?

A. Sumter at 8.05 a. m.

Q. What is the difference in the hours consumed by the two services?

A. In what way?

Q. Well, if you leave at approximately 10.00 o'clock by rail and reach there at 1.15, that would give you three hours and twenty minutes, wouldn't it?

A. Yes. The difference in it is that this is branch-line territory, and these trains are not only restricted to slower [fol. 694] schedules than they would be on the main line but there are connections involved at Hartsville. The same crew leaving now at McBee does not now go through to Sumter.

Q. Couldn't you push up your 9.55 train to 6.00 in the morning and accomplish your service by rail in practically the same time?

A. We could not do that, because this is a mixed-train service and makes passenger connections with No. 1 and because it also carries United States mail and has to make the connection.

Q. Your freights from the North to points on this branch line arrive at McBee about 8.30 p. m.?

A. That is right.

Q. And they spend the night in McBee, leaving there at 9.55 the next morning?

A. That is right.

Q. If the train left McBee over this route shortly after 8.30 p. m. tonight it would accomplish delivery during the night to all of these points, would it not?

A. That is true, but it would be a very complicated crew operation, due to the physical condition and character of these branch lines, as well as a very expensive operation.

Q. Are you familiar with the application filed by the Seaboard governing the proposed service between Hamlet and Columbia, which involves service on branch lines through [fol. 695] Cheraw, Chesterfield, Pageland, and Jefferson?

A. Only to the extent of hearing the testimony yesterday. Before that I knew nothing of it.

Q. Isn't the territory involved on that shoot over the two branch lines about the same sort of territory as that involved here?

A. No, sir.

Q. What is the difference?

A. Around Bishopville, Sumter, Timmonsville, Darlington, in my opinion, is a much better agricultural territory, and therefore more business is involved.

Q. Then the only difference is the amount of business involved?

A. As to the amount of business on the other lines I don't know. I have the figures on these lines.

Q. But the only difference in the operating line that you can conceive of is the larger amount of business on this McBee operation as compared with the amount of business out from McBee on the other side?

A. Yes, sir, that would be the only difference, except that the C. & L. is one straight line of railroad, for a short distance. The C., M. & C. likewise is one straight short

line, whereas the territory now under discussion has one branch line extending from Hartsville, South Carolina, to Poston, South Carolina, another extending off this branch [fol. 696] line from Hartsville, South Carolina, to Sumter, South Carolina, and another extending off this line from Lydia, South Carolina, to Timmonsville, South Carolina, all of which mileage, in operating a crew, has to be doubled.

Q. I was not speaking of the rail operation; I was speaking of the difference between the two proposed truck operations.

A. I am not sufficiently familiar with truck operations in the other territory to draw the comparison.

Q. Although both of them run into the town of McBee?

A. I think the testimony yesterday was that one of them came down through the town of McBee into Columbia.

Q. And both of them are a circular movement?

A. Yes, to some extent.

Q. And the proposed service over the Hamlet-Columbia branch is a night service by truck?

A. I think that was the testimony yesterday.

Q. But the proposed service over this branch is a day service?

A. That is correct.

Q. Why the difference?

A. I can only speak for the territory under discussion. My judgment in the matter is that we can leave McBee on this particular truck and make early-morning delivery, and for that reason it would not be necessary to make it a night operation.

[fol. 697] Q. Would it be possible to make it a night operation over this branch?

A. It would be entirely possible.

Mr. Watkins: I think that is all.

Cross examination.

By Mr. Turner:

Q. Mr. Sauls, the truck operation is intended to operate between what points? Name the principal towns and the way it goes?

A. McBee, Hartsville, Lydia, then to Timmonsville, from Timmonsville to Sumter——

Q. From Timmonsville to Sumter you intend to go on Route 76?

A. I believe it is Route 76.

Q. You do not now operate between Timmonsville and Sumter directly by rail?

A. No, we do not.

Q. You would actually go through Lynchburg, Mayesville, and other small points?

A. Probably so; I am not familiar with the stations.

Q. When you stated to your counsel that you did not cover any town other than those on the railroad, I understand you meant not to stop in those towns?

A. That is right.

Q. But you do actually go by a highway that does not parallel your railroad?

[fol. 698] A. Yes, sir.

Q. From Sumter you go back to Bishopville?

A. Yes, sir, Bishopville, then to Darlington, and from Darlington back to McBee.

Q. That entire circuitous trip is only 34 miles?

A. I testified that it would be around 134 miles.

Q. I beg your pardon. How does Hartsville compare with other shipping points in the state in the matter of traffic handled by the Seaboard?

A. In the State of South Carolina?

Q. Yes, sir.

A. I could not answer that question.

Q. Is it a heavy shipping point or light?

A. Oh, it is a heavy shipping point.

Q According to this railroad map, there is a pretty straight stretch from McBee through Darlington and Florence to Poston, isn't there?

A. Reasonably so. There are a large number of curves.

Q. As I understand it, this branch line runs out from Hartsville to Bishopville and Sumter?

A. That is right.

Q. And there is another branch line which you now operate from Hartsville to Timmonsville and Lydia?

A. That is right.

Q. What is the rail mileage, if you know, approximately, [fol. 699] from Lydia to Timmonsville?

A. From Lydia to Timmonsville is 17.1 miles.

Q. The crew that runs on that branch line, then, makes approximately only 34 hours a day?

A. No, that crew runs from McBee to Timmonsville and and back.

Q. Then there is another crew that runs from Lydia to Sumter and back?

A. No, there is another crew that runs from Sumter to Poston, in one direction, and one from Poston to Sumter, by Hartsville.

Q. Have you the less-than-carload tonnage into Timmonsville before you now?

A. Yes, sir.

Q. What is it?

A. For the thirteen-months' period there was only 300 tons in and 140 tons out, or a total of 440 tons.

Q. Would you or would you not be permitted to take mail on this truck line?

A. No, sir. As a matter of fact, there will be no mail to handle, because there would be no connection for it.

Q. Do you know, as a matter of fact, whether they are handling mail on trucks now.

A. We are not handling mail on any trucks that I operate.

Q. Have you made inquiry as to the right to handle it?

A. I have not.

[fol. 700] Q. What is the total tonnage into Hartsville, if you have it?

A. The LCL tonnage into Hartsville was 3,547 tons, inbound; 5,429 outbound; or a total of 8,976 tons. However, the biggest portion of that tonnage, while it moves on LCL billing and LCL rates, comes from the mills in that territory, in the way of cones and things of that sort, that is loaded and really moves in carload lots. The tonnage of LCL freight, as handled at more ordinary stations, into Hartsville is light.

Q. What is the carload tonnage into Hartsville?

A. I haven't that figure, but I would say possibly ten loads a day.

Q. Ten carloads a day?

A. Yes.

Q. What about the less-than-carload tonnage into Sumter?

A. Into Sumter, 685 tons inbound; 223 outbound; or a total of 908 tons.

Q. Bishopville?

A. Bishopville, 396 tons inbound, 107 outbound; total, 503.

Q. Darlington?

A. Darlington, 425 tons inbound, 200 outbound, or a total of 625.

Mr. Turner: Nothing further.

[fol. 701] Redirect Examination.

By Mr. Abeles:

Q. Mr. Sauls, Mr. Watkins asked you about the possibility of accomplishing the purpose we have in mind here by advancing the departure of our train from McBee from 9.55 a. m. to 6.00 a. m., the scheduled time of departure for the truck. You said that would be impracticable because it would break the connection with train No. 1. From what point does that train come?

A. Train No. 1 originates in New York and picks up the mail from all Eastern points all the way down.

Q. At what time is it scheduled to arrive at McBee?

A. I think it is about 9.40; I don't have the minute figure.

Q. It is considerably later than 6.00 a. m., though?

A. Oh, yes. We make connection with it on this train and get the train out as quickly as possible after it arrives.

Q. Then the operation of our McBee-Sumter service is articulated with the operation of train No. 1?

A. Yes, sir.

Q. Mr. Watkins, I believe, also asked you about the possibility of performing night service instead of day service on this route by truck. Would there be any purpose in scheduling this truck at night instead of by day?

A. I don't see any, because we would be making early-morning delivery and operating in daylight.

Q. The latest delivery, I believe you said, would be at [fol. 702] Sumter at about 8.00 or 8.15 a. m.?

A. No; the latest delivery would be at Darlington around ten a. m.

Q. And that is in ample time for deliveries to receivers?

A. Yes, at that particular point.

Q. Mr. Turner, I believe, pointed out that a certain part of its route would traverse towns not reached by our rail line. Is that correct, or is it not?

A. That is correct.

Q. I am not sure you made it clear. Shall we serve those towns?

A. We will not.

Q. Shall we operate with closed doors through those towns?

A. Yes, sir. We will only serve the stations that we are now serving by train.

Q. Have you a statement of the less-carload tonnage received at and forwarded from all stations served by this route?

A. Yes, sir.

Q. I wish you would give that for the record.

A. That is all in the record, with the exception of the station of Lydia, which received 23 tons inbound and had 4 tons outbound, or a total of 27.

Q. You have previously given the tonnage for all the other stations?

[fol. 703] A. Yes, sir, under the questions of Mr. Turner.

Q. Do you know any truck service operated into this territory?

A. I do not; I am not familiar with the truck operations.

Q. In your opinion, will the form of service which we propose to render, confined, as it is, to rail stations and to traffic received from our rail service and delivered to our rail service at McBee, compete with the service performed by certified motor carriers, if there are any operating in this territory?

A. In my opinion not, for the reason that the merchandise which we are now handling in that territory is practically all merchandise which arrives at Hamlet, transferred during the day in merchandise cars from the various shipping centers at long distances, and is moved to McBee in carload lots.

Q. By rail?

A. By rail. There is very little merchandise in these stations that we are handling that is offered for short-distance movement.

Recross-examination.

By Mr. Watkins:

Q. Mr. Sauls, you are making that statement without any knowledge of the existing truck service in that territory?

A. Yes, sir.

Mr. Watkins: That is all.

[fol. 704] Recross examination.

By Mr. Turner:

Q. It would be entirely possible, Mr. Sauls, for your company at a subsequent date to change the present method of operating its trains in this particular territory, would it not?

A. No; I would say not, Mr. Turner. The schedules with which we connect have been established from New York and other Eastern points for a great many years; and for the past fifteen years, that I have personal knowledge of it, there has been very little change in the schedule of train No. 1.

Q. That is not what I mean. I mean the set-up of this particular territory. It would be entirely feasible, would it not, to operate a train from McBee to Poston, would it not, straight through?

A. It would be feasible, yes.

Q. And it is not practicable to handle all less-than-carload freight that you have to Hartsville and Darlington by truck?

A. It is not the intention to handle the less-than-carload tonnage going into the mills at Hartsville by truck, as these shipments are delivered direct from cars.

Q. The possibility of ever abandoning the rail lines into Hartsville and Darlington and Florence is very, very remote, isn't it?

[fol. 705] A. Yes; I do not see how it could be done.

Q. Yet at the same time you do not have much tonnage, either carload or less-than-carload, from Hartsville south through Lydia and Sumter.

A. We have at certain seasons of the year a very good movement of tonnage out of Timmonsville, especially tobacco shipments in carloads; and there is also a very good movement of carload business in and out of Bishopville. At the present time there is a considerable movement in connection with the Government work at Ashwood, just south of Bishopville.

Mr. Turner: Nothing further.

The Chairman: Any further questions?

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: The witness may be excused.

Mr. Abeles: That closes our case in chief, Mr. Chairman.

Chairman Darby: Have the interveners any witnesses?

Mr. Turner: Yes, sir. I call Mr. Massey.

J. H. Massey was sworn and testified as follows:

Direct examination.

By Mr. Turner:

Q. You live in Columbia?

A. Yes, sir.

[fol. 706] Q. You are connected with what company?

A. New South Express Line.

Q. In what capacity?

A. Vice-president in charge of operations.

Q. What is the nature of its business?

A. General merchandise hauling and express business by truck.

Q. What is the nature of the organization of the business—is it a partnership or a corporation?

A. Corporation.

Q. Under the laws of what state is it incorporated?

A. South Carolina.

Q. What state do you cover, principally, in your operations?

A. South Carolina.

Q. Do you go into any other state?

A. Yes, sir, into North Carolina and Georgia.

Q. How long has the New South Express Line been operating over the routes which it covers now?

A. Since January 15, 1935.

Q. How long had its predecessors been operating over them?

A. Since 1928, I think is the correct date.

Q. State for the record whom you succeeded on those routes.

A. Well, the Piedmont Motor Express, Incorporated, of Greenville, and Bowman Transportation Company, of Bowman, South Carolina, was merged into the Piedmont-Coastal [fol. 707] Motor Express Corporation.

Q. And those companies, you say, had operated over these routes since 1928?

A. Yes, sir.

Q. Mr. Massey, in the direction and over the territory as covered by the application of the Seaboard Railroad (in the territory between Gaston and Garnett), state whether you operate in that territory.

A. Operate between Swansea and North.

Q. Do you touch the town of Gaston, too?

A. No, sir.

Q. You operate from Swansea to North?

A. Yes, sir, and on to Orangeburg.

Q. Is Woodford in between Swansea and North?

A. Yes, sir, it is.

Q. Do you operate through that town?

A. Yes, sir.

Q. Mr. Massey, state whether or not you have an intrastate certificate over the routes that you have just described and other routes that you operate over.

A. Yes, sir, we have.

Q. State whether or not you have certificates of authority from the Interstate Commerce Commission to do any interstate business over these routes.

A. No, sir.

[fol. 708] Q. Have you made application, or did you make timely application to the Interstate Commerce Commission under the grandfather clause in the Motor Carrier Act?

A. We did.

Q. Has there been any disposition of those applications by the Interstate Commerce Commission of which you have had notice?

A. No, sir.

Q. State whether you were actually in bona fide operation over this route mentioned, as well as other routes to which you will testify, on June 1, 1935.

A. We were, yes, sir.

Q. And have you continuously been operating over those routes since that time?

A. Yes, sir.

Q. State whether or not you are operating over those routes at present.

A. Yes, sir.

Q. What kind of service do you operate between Columbia, Swansea, Woodward, and North—is it daily, triweekly, or what?

A. Daily.

Q. State whether or not you operate between Sumter and Timmonsville.

A. Yes, sir.

[fol. 709] Q. State whether or not you operate into the other towns mentioned in the application of the Seaboard Railroad designated as between McBee and Sumter.

A. We operate in all except McBee. We do not go into McBee.

Q. What type of service do you render the people in all of these towns, with the exception of McBee?

A. Daily.

Q. Your truck on that route originates out of what point?

A. Sumter.

Q. State what time it requires to get shipments out of Columbia to any point mentioned in the applicant's proposed route, other than the town of McBee.

A. We have service leaving Columbia at 3.00 a. m.; arrives at Sumter around five. We have a truck leaving Sumter for Bishopville, Hartsville, and Cheraw at 7.00 a. m. We have another truck leaving Sumter (of course, this does not involve this application) going to Manning and Kingstree.

Q. What about Timmonsville?

A. We have a through truck running from Columbia to Florence, which leaves here at 3.00 a. m., that works stations between Sumter and Florence, arriving at Florence around 9.00 a. m.

Q. It arrives in Timmonsville about what time?

A. Well, about 7.45, I would say, or 8.00 o'clock.

[fol. 710] Q. State whether your company is able to take care of all the traffic that is being offered to it at this particular time.

A. Yes, sir.

Q. Are you able and willing to haul more traffic that you are hauling now?

A. Yes, sir.

Q. State whether or not the Seaboard Railroad has ever approached you or indicated a willingness to transfer freight to you.

A. No, sir, they have not.

Q. Would you be willing to take such traffic as they have for such points from them, either at Cheraw or Columbia, and make daily deliveries to those points?

A. We would.

Q. How would you approach such an arrangement? I mean, would you be willing for it, or anxious for it?

A. Yes, sir, we would be willing to furnish the service on any schedule that might be designated by them, provided that they did not want too many each day.

Q. Mr. Massey, does your company carry insurance?

A. Yes, we do.

Q. Do you include cargo insurance?

A. Yes, sir.

Exam. McCaslin: I should like to inquire there, on that [fol. 711] insurance question, do you carry all the insurance that is required by the regulations of the Interstate Commerce Commission?

A. Yes, sir, and more.

By Mr. Turner:

Q. Mr. Massey, is there any other service in the territory, that you know of?

A. Yes, sir, we have service from Darlington to Florence and eastern. We have daily service from Marion, Mullins, Dillon, and through that section.

Q. State whether or not your lines connect and furnish daily service between Charleston and Sumter.

A. Yes, sir, they do.

Q. State, if you will, what connections you have at your termini in Charlotte for eastern traffic.

A. We have Horton Motor Lines and several others that we interchange with at Charlotte for the East, and West, too.

Q. You handle that traffic down through Camden?

A. Some of it, yes, sir, down through Camden to that territory.

Q. State whether or not you go into the town of Cheraw.

A. Yes, sir, we do.

Q. State whether you render service from that point and that vicinity into this territory.

A. We do.

Q. Are your lines confined to the Peedee section of the [fol. 712] State, or do they cover other sections?

A. They cover both the Peedee and other sections.

Q. Do you make any connections into the State of Georgia?

A. Yes, sir.

Q. At what point?

A. Augusta.

Q. State whether or not, through that connection and through your Columbia terminal, you make connections with all movements from the South into this territory which is proposed to be served.

A. Yes, sir, we do.

Q. State whether or not you keep pretty well in touch with the territory over which you operate.

A. Yes, I do.

Q. Have you, or not, heard of any public demand for any greater service in the territory sought to be served by these applications?

A. No, sir, I have not.

Q. Is there, in your opinion, any need or public necessity for this additional service?

A. In my opinion the territory is being adequately served at this time.

Q. State, of your own knowledge, whether there are any other truck companies or truck service serving or being rendered in this particular territory.

[fol. 713] A. Yes, sir, there are two that I know of in Hartsville—Jordan Truck Lines and Mr. Chapman, I believe it is.

Q. State whether or not, through notices or other authenticated information that comes to you, these other truck lines have, or if they claim, rights under the grandfather clause.

A. They have, yes, sir.

Q. State whether they are, in your knowledge, actually and actively operating in the territory now.

A. Yes, sir.

Q. I ask you if at least one or more of such carriers as you have mentioned is not engaged as what has been referred to as an irregular common carrier.

A. Yes, sir.

Q. Under those classifications I ask you if those carriers presently are not operating for anyone who offers traffic over any route within the specified territory?

A. I am satisfied they are.

Mr. Turner: The witness is with you.

Cross-examination.

By Mr. Abeles:

Q. Mr. Massey, I think you stated that the southern terminus of your operations is North, did you not?

A. It is really Charleston.

Q. So far as the territory served by the rail line is con- [fol. 714] cerned, you do not operate south of North, do you?

A. No, sir, we go into Orangeburg from there.

Q. You operate from North to Columbia?

A. Yes, sir.

Q. And from Columbia to Sumter over Highway 76?

A. Yes, sir.

Q. And from Sumter to what other points in this McBee-Sumter territory?

A. We operate from Sumter to Bishopville, Hartsville, and Cheraw.

Q. Under your certificate from the State Commission and your application for a certificate from the Interstate Commerce Commission, do you serve all towns on those routes?

A. Yes, for which we have freight.

Q. What I mean is, are you authorized to serve all of those intermediate towns?

A. Yes, sir, there is no restriction.

Q. Did I understand you to say that you operate in North Carolina also?

A. Yes, sir, from here to Charlotte and from here to Asheville, through Greenville.

Q. Do you make reports to the North Carolina Commission?

A. Yes, sir.

Q. Did you during the year 1935?

A. Yes, sir, I suppose we did.

[fol. 715] Q. What did you state your position with the company is?

A. Vice-president in charge of traffic and operation.

Q. You would be in position to know whether you did, or not, wouldn't you?

A. I did not personally. Mr. Weathers was in charge of the company at that time, and I can not state whether he did or not. I thought you meant about the gross receipts.

Q. From that last statement I take it that you know you are required to report your gross revenues to the North Carolina Commission for the purpose of taxation, do you not?

A. We report them monthly.

Q. And you were operating in North Carolina in 1935?

A. Yes, sir.

Q. I am handing you a copy of the report of the North Carolina Utilities Commission for the biennial period 1935-1936, on page 324 of which are listed the revenues, expenses, and net income of motor carriers operating in North Carolina for the year 1935; and I ask you whether you find your company listed in that statement.

A. No, sir, I do not find them on page 324 or 325.

Q. Can you explain why it is not listed there?

A. No, sir, I can not.

Q. You mentioned two predecessor companies (at least two; perhaps more), the Piedmont Motor Express and the [fol. 716] Piedmont Transportation Company, as predecessors whose rights I presume you acquired in January, 1935. Is that correct?

A. Yes, sir, as the Piedmont-Coastal Motor Express Corporation. They were merged into the Piedmont-Coastal Motor Express Corporation.

Q. Were those companies operating in North Carolina?

A. Were they?

Q. Yes, sir.

A. I am sure they were, yes, sir.

Q. Do you find those on that statement?

A. They were not operating in 1935.

Mr. Watkins: I want to object to this line of testimony about the report of the North Carolina Commission. They are referring here to something we do not know anything about; we do not know how it is compiled, or anything else;

and he is trying to draw the conclusion, from their absence from that list, that they are violating the law.

Mr. Abeles: It is a public document.

Mr. Watkins: Put it in evidence, then.

Mr. Abeles: I don't have to. I am asking him to read that document.

The Chairman: I think he should answer the question, Mr. Watkins.

By Mr. Abeles:

Q. I am asking you whether your company paid a tax to the State of North Carolina for the year 1935

[fol. 717] A. Yes, sir, they did.

Q. I do not think you have explained on the record what the basis of your opposition to the application here under consideration is. I should like to have you explain just why you are opposing the granting of this application.

A. Well, we are opposing it on the ground that we think the territory is now being adequately served.

Q. By motor truck?

A. Yes, sir.

Q. You have heard the testimony, I presume, of the witnesses of the applicants, have you not?

A. Yes, sir.

Q. And you understand fully the nature of and the limitations upon the service which is proposed, do you not?

A. Yes, sir.

Q. You stated on your direct testimony that you would be willing to enter into arrangements with the applicants for the transportation of their shipments to the points served by your company, did you not?

A. I did.

Q. I believe you said, provided they did not ask for too much?

A. Too many schedules a day, I said.

Q. Would you, if such arrangements could be effected, so arrange your schedule that you would meet all of the [fol. 718] trains with which the truck service would be coordinated?

A. If the business would justify it, yes, sir.

Q. I am not asking about whether the business would justify it.

A. I can answer it in that way, and that is the only way I can answer it.

Q. But you would adjust your service, for the purpose of obtaining this business, to the convenience of the railroad?

A. Not at an operating loss, no, sir.

Q. Is your company in receivership?

A. No, sir.

The Witness: Off the record.

(Short statement, outside the record.)

Mr. Abeles: On the record.

By Mr. Abeles:

Q. Mr. Massey, if you would not be willing to arrange your schedules in such a manner as would meet the convenience of the railroad and meet the train schedules, it is obvious, is it not, that the whole purpose of the railway in establishing this auxiliary service would be defeated?

A. Well, I will answer that as I did before; if the business the railway company could give us would justify the rearrangement of our schedules, we would. Otherwise we [fol. 719] would not.

Q. You would not go any further?

A. I could not go any further, because we would not want to operate at a loss.

Q. You do not operate into McBee, I think you said?

A. No, sir.

Q. Do you operate over the highway paralleling the line of railway between Columbia and Hamlet?

A. Only to Camden.

Q. And that is how far north of Columbia?

A. Thirty-two miles.

Q. Then you could not receive, if a joint arrangement could be made, any traffic moved south from Hamlet to McBee destined for the McBee-Sumter territory?

A. We could receive it at Camden only.

Q. But only if we were willing to take it to Camden and then let you back-haul it over your route?

A. Back-haul?

Q. Well, Camden is north of McBee, is it not? I am speaking now of the southbound movement.

A. We do not run beyond Camden.

Q. So that would constitute a back-haul?

A. You would have to get it to Camden for us; I don't know whether you would term that a back-haul or not.

Q. That is evident. You stated, I believe, that you operate [fol. 720] daily?

A. Yes, sir.

Q. Does that include Sunday?

A. Except Sunday. And three holidays.

Q. Three holidays?

A. July Fourth, Thanksgiving, and Christmas Day.

Q. I find it a little bit difficult to follow the description of your routes entering this territory over which we propose to operate truck service. Give me the termini of those routes, will you?

A. You mean in the Peedee section?

Q. I must confess I am not familiar with that term.

A. Well, we have an office at Sumter and Hartsville——

Q. No, I am asking you the termini of your routes.

A. From Sumter, or what?

Q. Going through Sumter.

A. Through Sumter into Bishopville, Hartsville, and Chetaw.

Q. Do you stop at Cheraw?

A. Yes, sir.

Q. That is the northern terminus of that route?

A. Of that particular route, yes, sir.

Q. What is the southern terminus of that route? Sumter?

A. Sumter, or Columbia—I don't know which. I would say Sumter, yes.

Q. You do not operate, I believe you said, from Columbia [fol. 721] to Sumter?

A. Yes, sir.

Q. Does the same truck go through from Sumter to Cheraw?

A. No, sir.

Q. So you would have to make a change?

A. Yes, sir. The Columbia truck runs through to Florence from Sumter, Mayesville, Timmonsville. There is another little station in there.

Q. Atkins?

A. Yes, sir.

Q. That particular route terminates at Florence, then?

A. From Columbia it terminates at Florence.

Q. And your other route starts at Sumter, I believe you say? I am speaking now of your Cheraw service.

(Witness does not answer.)

Q. Give us the termini of the service that starts at Sumter.

A. Well, Cheraw is one, through Bishopville and Hartsville, as I said. The other is to Florence, Marion, Darlington, Dillon, and through that section, back through Hartsville and Darlington to Florence.

Q. You do not touch Hartsville on your northbound route?

A. We touch it from the truck leaving Sumter at 7.00 a. m., which goes to Bishopville and Hartsville—gets there about nine, I think, and which delivers the freight which is [fol. 722] put off in our terminal at night from the truck from Charlotte.

Q. Do you go through Lamar?

A. I think so. Truthfully, I am not thoroughly familiar with the local stations over there.

Q. Do you serve every station served by the railroad?

A. I do not know every station that is served by the railroad.

Q. Beginning with McBee—you do not serve McBee?

A. No, sir.

Q. Hartsville?

A. Yes, sir.

Q. Lydia?

A. Yes, sir.

Q. Alcot?

A. Yes, sir.

Q. Bishopville?

A. Yes, sir.

Q. Sumter?

A. Yes, sir.

Q. Timmonsville?

A. Yes, sir.

Q. Lamar?

A. I don't know about Lamar.

Q. And Darlington?

[fol. 723] A. Yes, sir, we serve Darlington.

Mr. Abeles: I think that is all.

Redirect examination.

By Mr. Turner:

Q. If these gentlemen are serious about this connecting with you on this line between Columbia and Hamlet, we could accommodate them at Cheraw, couldn't we?

A. Yes, sir.

Q. Or at Columbia or Camden?

A. Yes, sir.

Q. Or Sumter?

A. Yes, sir.

Q. Mr. Massey, in the event that they offered you traffic that is profitable, or enough to justify the trip, can you, or not, re-arrange your schedules to take care of it?

A. Yes, sir, we will do that, or put on extra equipment to take care of their needs.

Q. I ask you whether or not you can operate at a profit this line if the railroad could operate it at a profit?

A. Yes, sir, we feel like we could.

Q. I ask you whether or not you paid all the taxes that you owe, so far as they have come to your knowledge?

A. Yes, sir.

Q. I ask you specifically if you have paid your taxes to the State of North Carolina.

A. We pay that monthly; and, of course, the tag tax is [fol. 724] cash when we get them.

Q. State whether or not you have paid your taxes for the current month—or for the past month for which they are due?

A. We paid by the tenth of this month.

Q. And this pamphlet or whatever it may be notwithstanding, have you paid your taxes?

A. Yes, we have. I didn't understand that question, and I don't know yet.

Q. I ask you to look at pages 324 and 325 and see if you see the names of Horton Motor Lines or Barnwell Brothers.

A. No, sir.

Q. Do you know that they operate in the State of North Carolina?

A. Yes, sir, I do.

Q. Do you see any strictly interstate carrier that you know of? I mean anybody that does not operate except interstate.

Mr. Abeles: I might explain, Mr. Turner, that I did not suggest or intend to suggest that he was evading taxes, at all. I directed his attention to that compilation merely in connection with his statement that he is operating in North Carolina.

By Mr. Turner:

Q. Do you operate into Charlotte every day?

[fol. 725] A. Yes, sir.

Q. And do you pay your taxes there?

A. Yes, sir.

Exam. McCaslin: Off the record.

(Short discussion, outside the record.)

Chairman Darby: On the record. Is there anything further you want to ask this witness, gentlemen?

Mr. Abeles: Just one or two questions.

Recross examination.

By Mr. Abeles:

Q. Mr. Massey, if the Receivers of the Seaboard turned over freight to you destined to points on our rail line, we would, of course, be short-hauling ourselves, would we not?

A. Yes, sir.

Q. Would you be willing to turn over to us freight transported by you to points reached both by your line and our line?

A. No, sir, I would not be willing to do that.

Q. Then you are suggesting here that we do something for you that you would not do for us?

Q. Well, if you were going to put on this particular service, I suggested that we could do it for you, and possibly cheaper than you could maintain the service yourselves, as we are covering the territory which you propose to cover.

Q. Possibly cheaper?

[fol. 726] A. Yes, sir.

Mr. Abeles: That is pure surmise.

Reredirect examination.

By Mr. Turner:

Q. If you found the traffic over any 100 or 134 miles of your route now so heavy that you could not handle it yourself, would you make an agreement with the Seaboard to handle it, or would you go and try to build a railroad.

A. I would make an agreement with the Seaboard.

Mr. Turner: Nothing else.

Chairman Darby: Any further questions by anyone? If not, the witness may be excused.

Gentlemen, I should like to ask you this one particular thing. Let's not go into these long drawn out questions that do not mean anything to the case. Let's confine the testimony to the issue.

Exam. McCaslin: Off the record.

(Remarks by the Examiner, outside the record.)

Chairman Darby: On the record.

Have you another witness, Mr. Turner?

Mr. Turner: Yes, sir. I call Mr. Jordan.

CARROLL T. JORDAN was sworn and testified as follows:

Direct examination.

By Mr. Turner:

Q. Mr. Jordan, you live in Hartsville?

[fol. 727] A. Yes, sir.

Q. How long have you lived there?

A. Thirty-three years.

Q. In what business are you engaged?

A. Well, oil, trucking, and farming.

Q. Have you held any office with any civic organization in your town in recent years?

A. Yes, sir.

Q. State what.

A. What do you mean—in connection with trucking?

Q. No, I mean in the town of Hartsville.

A. I am on the board of directors of the Rotary Club.

Q. How about the Chamber of Commerce?

A. I am just a member of it.

Q. What office, if any, do you hold in any trucking organization in the state—any organization of truckers?

A. At present I am on the board of directors of the South Carolina Truckers' Association.

Q. Have you previously held that office?

A. For the past two years.

Q. Were you, or not, operating on June 1, 1935?

Mr. Abeles: I am not going to question that.

Mr. Turner: All right.

By Mr. Turner:

Q. What are the general routes you cover as a truck operator?

[fol. 728] A. Our principal haul is between Charlotte, North Carolina, and Hartsville, South Carolina, through Monroe, Pageland, Jefferson, and McBee.

Q. Are there any other truck operators or motor trucks that serve the territory generally covered, or portions thereof, as identified, for the purpose of this record, as the Seaboard McBee-Sumter operation?

A. We have several large ones, the largest being New South; the next Parrish-Gray Lines, at Sumter. R. D. Fowler Motor Express. Lewis & Holmes. McDougald Transfer Company. Privette & Mozingo. Kelley Transfer. And to my own knowledge there are some fifteen or twenty more that operate in this immediate territory around Hartsville.

Q. Are all of these people, to your best information and belief, entitled to grandfather rights under the Motor Carrier Act?

A. The ones I have named, yes.

Q. State whether or not there has come to your attention any evidence of a public convenience and necessity for any additional service by motor truck in the territory covered by the McBee-Sumter application.

A. Not to my knowledge.

Q. I ask you if you are not located in the very heart, or center, of this particular territory.

A. I think I am.

[fol. 729] Q. Do you keep up with the transportation situation in that vicinity?

A. I do my best.

Q. If there were any need for additional service would you, or not, have normally heard of it?

A. I think I would.

Q. Has the Seaboard Air Line Railway made any effort to exchange freight with you for this McBee-Sumter territory?

A. They have not. At one time, two or three years ago, I approached Mr. Whaley, their agent at Hartsville, on the subject of handling shipments out of Hartsville to McBee, in order that they might catch their through trains going north.

Q. Are you in position to handle additional freight, if it were offered to you?

A. Yes, sir.

Q. In your opinion as an experienced truck operator, is there any need of or any public convenience or necessity for the proposed line?

A. I do not think so.

Q. State whether or not you serve the East by interchange.

A. I do. Barnwell Brothers and Aikers & Hudson are the two Eastern routes.

Mr. Turner: The witness is with you.

[fol. 730] Cross-examination.

By Mr. Abeles:

Q. What is the name of your company?

A. I operate as Jordan's.

Q. Are you certificated by the State?

A. I hold Class F.

Q. Are you a common carrier?

A. I do not operate as a common carrier within the State.

Exam. McCaslin: I want to clear that up. You mean within the State or within the terms of the South Carolina State law?

A. Within the terms of the South Carolina State law.

Exam. McCaslin: Off the record.

(The Examiner made a statement, outside the record.)

By Mr. Abeles:

Q. Have you applied to the Interstate Commerce Commission for a certificate?

A. Yes, sir.

Q. As a common carrier?

A. Yes, sir.

Q. Do you carry all classes of traffic?

A. Yes, sir.

Q. Unlimited in your classification?

A. Yes, sir.

Q. You operate only to Hartsville, do you not?

A. Yes, sir, out of Hartsville.

Q. Have you any regular schedule?

[fol. 731] A. We operate principally between Hartsville and Charlotte, yes, sir.

Q. On regular schedule?

A. Well, we have, as a rule we have from ten to twelve trucks a week between those points.

Q. You do not go beyond Hartsville in the Sumter area?

A. Yes, sir, we operate out of Hartsville all over South Carolina.

Q. You said you operate out of Hartsville to Charlotte.

A. That is our main traffic, yes, sir. But we haul out of Charleston, South Carolina, nearly daily for one concern.

Q. Do you operate to Darlington?

A. We run trucks all over that territory—Florence, Darlington, Timmonsville, Lamar, Sumter—nearly the entire territory.

Chairman Darby: Off the record.

(Statement by the Chairman, outside the record.)

The Chairman: On the record.

By Mr. Abeles:

Q. In your application to the Interstate Commerce Commission, did you designate any fixed routes and termini?

A. We designated between Hartsville and Charlotte. For your information, above Charlotte there are hundreds——

Q. I am not interested in the territory above Charlotte [fol. 732] but only in this territory with which we are

immediately concerned. Then you have asked the Interstate Commerce Commission for no authority to operate into any point south of Hartsville—is that correct?

A. No, sir, we asked them for the right to operate all over South Carolina.

Q. With undesignated routes and termini?

A. You misunderstand me.

Q. Let me ask you this, to put it specifically. Did you ask the Interstate Commerce Commission for authority to operate to Timmonsville?

A. As a common carrier, yes.

Q. I understood you to say you asked for the specific route from Hartsville to Charlotte?

A. We did.

Q. And any other routes?

A. Yes, sir.

Q. What other routes?

A. We did not specify.

Q. Oh, you are asking the Interstate Commerce Commission, then, for a roving certificate corresponding to your State certificate—is that it?

A. That is right. We have made two applications and have two docket numbers.

Chairman Darby: Off the record.

[fol. 733] (Statement by the Chairman, outside the record.)

The Chairman: Proceed, gentlemen. Any further questions?

Exam. McCaslin: Mr. Jordan, you say you have two applications?

The Witness: Yes, sir.

Exam. McCaslin: One was for a regularly scheduled common-carrier operation between Charlotte and Hartsville?

The Witness: Yes, sir.

Exam. McCaslin: And the other for an irregular contract-carrier operation to all points in South Carolina?

The Witness: And North Carolina and southern Virginia and northern Georgia.

Mr. Abeles: But as to your routes, other than the Charlotte-Hartsville service you undertook in your application to the Commission to provide no regular service?

The Witness: No, sir.

Mr. Turner: If anybody offers you any interstate traffic from anywhere going into the territory covered by the McBee-Sumter application, would you haul it?

The Witness: I would grab it fast.

By Mr. Abeles:

Q. Would you do this for us, Mr. Jordan—you know the routes and schedules proposed here, do you not?

A. Yes, sir.

[fol. 734] Q. Would you agree to establish those routes and those services, regardless of the volume of traffic which we might offer you?

A. For Darlington and my immediate territory.

Q. I am speaking now of all the points to be served by our proposed truck service.

A. For your Hartsville proposition, yes.

Q. That is not answering my question. For all the points which we propose to serve by our trucks?

A. I would not care anything about your stuff in North Carolina.

Q. Speaking of this McBee-Sumter territory?

A. I would like to have it.

Q. Would you be willing to establish routes and schedules regardless of the amount of traffic and without any guaranty of the amount of traffic?

A. I think I would be willing to, yes, sir.

Mr. Turner: I think the fair question there would be, if they offered all they had there.

Mr. Abeles: I think that is a fair question. Into every one of the towns which we propose to serve?

A. I don't know whether I understand. If it is Sumter, Hartsville, Darlington, and Timmonsville, yes, I would like to have that.

By Mr. Abeles:

Q. You understand, of course, that we are not proposing [fol. 735] to haul anything to Hartsville by truck, do you not? Nothing to the mills at Hartsville by truck.

A. Well, that would be O. K.

Q. And that we are not proposing to haul by truck any carload shipments moving by rail?

A. Would you accept carload shipments if I were to offer them to you?

Mr. Abeles: I am not on the witness stand.

By Mr. Abeles:

Q. You understand that, do you?

A. I would play ball with you if you will play ball with me.

Q. That is the best you can answer?

A. Yes, sir.

Mr. Abeles: That is all.

Mr. Turner Is there anything else you want to say?

The Witness: No, sir.

Chairman Darby: The witness is excused.

D. C. SMITH was sworn and testified as follows:

Direct examination.

Mr. Turner: I want to put this on the record, Mr. Commissioner. I am offering this witness as a witness for the New South Express Lines and do it with the full knowledge that we shall be bound by his testimony. I have not [fol. 736] conferred with him, but he wishes to offer his testimony, and I put it in the record without knowing in advance what he will say and with the knowledge that I shall be bound by his testimony.

The Chairman: Yes, sir.

By Mr. Turner:

Q. Mr. Smith, you work for whom?

A. Nillson Motor Express.

Q. Where is their home office?

A. Walterboro, South Carolina.

Q. What position do you hold with them?

A. Soliciting agent.

Q. Tell us where you operate in this territory which is covered by the application.

A. We have a line from Walterboro to Columbia which hits the Gaston-Garnett proposal.

Q. State where you come in, with regard to their proposal.

A. Denmark, and from Denmark into Columbia. Then we also hit it at Fairfax again, with our Walterboro-Augusta operation and interchange with Fleming Truck Line at Savannah for points between Savannah and Fairfax on the Seaboard.

Q. Do you know of any carrier who operates in that immediate vicinity?

A. New South operates from Columbia to North, in that vicinity; and Lowe Transfer Company, of Aiken, operates Olar, Ulmer, Sycamore, and Fairfax.

[fol. 737] Q. From your general knowledge of the traffic situation along the proposed route, is there any need for additional service?

A. I would not think so, no, sir.

Q. Do you know, or not?

A. Being soliciting agent for the company, I think I have some idea of the amount of traffic into that territory, and with the companies now operating I do not think there is enough business to warrant any additional truck service.

Q. State whether or not there is a public need and necessity for additional service in that territory.

A. I do not think there is any need for any additional service other than can be covered by the four companies mentioned.

Mr. Turner: The witness is with you.

Cross-examination.

By Mr. Abeles:

Q. Where, did you say, your company is operating, Mr. Smith?

A. You mean the full operation?

Q. No, just where it affects this territory.

A. From Walterboro to Columbia.

Q. You do not serve any of the territory south of Denmark, between Denmark and Garnett?

A. Yes, we serve Fairfax.

Q. But nothing from Fairfax south?

[fol. 738] A. Except through connections with Fleming Truck Line out of Savannah. They have daily service, and we interchange with them in Savannah.

Q. Have you heard the testimony of the witnesses of the applicants in connection with the Gaston-Garnett service?

A. Yes, sir.

Q. If the railway confines the service to be performed by its proposed truck service to the transportation of traffic carried by rail, will that in any way hurt your business?

A. That is problematical. The purpose, as I see it, of your proposal is to increase your revenue, and you have to take it away from somebody if you do. So, naturally, we presume if you give truck service in that territory you would take business away from the certificated carriers who now operate.

Q. If we carried only traffic that was offered to the railroad for transportation by rail?

A. If you would not accept any additional business to the business you are now handling, then we would have no objection whatsoever.

Q. You do not happen to know that we could not lawfully do that, do you?

A. I do know it, and that is why I am against the whole proposal.

Q. What kind of certificate has your company?

[fol. 739] A. What is known as a D Certificate in South Carolina.

Q. Have you a certificate from the Interstate Commerce Commission?

A. As to that I can not answer, because Mr. Nillson handled that. I know the proper applications were made.

Q. You do not know what you have done as to getting authority to carry interstate traffic?

A. I know the proper applications were made, but I do not know what disposition was made of these applications.

Q. Can you tell me how much traffic your company carries that originates in territory served by the Seaboard rails and destined to the points proposed to be served by our proposed truck service?

A. Do you mean all of the Seaboard operations or just the operation covered by this proposal?

Q. Only the latter.

A. It would be impossible for me to do anything except guess at that tonnage.

Q. Then you could only guess as to whether or not this proposed service would hurt you?

A. It would certainly be a matter of opinion.

Q. Unless you know how much traffic you carry that might be affected by this proposed operation you could not do anything but guess as to its effect upon you? That is obvious.

[fol. 740] A. I know this, that by your starting the truck service in there you would not increase the potential tonnage that moves into that territory now.

Q. But we might save what is there?

A. I realize that, but, I am making this point—if you increase your service and increase your volume you will have to take it from somebody who is already getting it.

Mr. Abeles: That is all.

Mr. Turner: That is all I have to offer.

Mr. Watkins: On behalf of those whom I represent, and in view of the rulings that have been made by the Joint Board, we do not desire to enter any testimony at this time. However, I want to renew the motion that this hearing be not closed but remain open for the purpose of allowing the Commission to consolidate this and the other hearings referred to in my motion this morning, and I move that the motion to consolidate be granted.

Chairman Darby: Mr. Watkins, I deny that motion on the grounds that I stated this morning—that if the Interstate Commerce Commission sees fit to consolidate these hearings it can do so, but I do not think this Board has any authority to consolidate them after the instructions it has received from the Interstate Commerce Commission.

Mr. Watkins: I should like to have an exception noted [fols. 741-742] to that.

The Chairman: Yes, sir. Do you desire to file briefs?

Mr. Watkins: It will probably be necessary for me to file a brief on my motion which has been made, and to that extent I reserve the right.

The Chairman: Mr. Abeles?

Mr. Abeles: We reserve the right, also.

The Chairman: Briefs, subject to such different order as the Commission may make, will be due in these cases on July 12, 1937.

Is there anything else?

The hearing is closed.

(Whereupon the hearing was adjourned, at 6:40 o'clock p. m., Saturday, June 12, 1937.)

[fol. 743] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket MC 86,687. Sub. No. 7

In the matter of the application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a certificate of public convenience and necessity, Form BMC 8, Sub. No. 7, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of Virginia and North Carolina between Richmond, Va., and Henderson, N. C.

N. C. Utilities Commission Rooms, Raleigh, N. C., June 14, 1937, 9 a. m.

Before: Joint Board No. 7, composed of: Hon. Stanley Winborne, Raleigh, N. C., and Hon. H. Lester Hooker, Richmond, Va.

Present: Hon. Stanley Winborne, Raleigh, N. C., acting as Chairman.

Also present: W. W. McCaslin, Examiner, Bureau of Motor Carriers, Charlotte, N. C.

APPEARANCES:

Chas. T. Abeles, and Murray Allen, Seaboard Air Line Railway Building, Norfolk, Va., *North Carolina*, appearing for applicants.

Edgar Watkins, Jr., Bona Allen Building, Atlanta, Ga., appearing for Southern Motor Carriers Rate Conference.

[fols. 744-745] Proceedings

The Chairman: The Interstate Commerce Commission has set for hearing at this time and place Docket No. MC 86687, Sub. No. 7, application of Seaboard Air Line Railway for a certificate of public convenience and necessity authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce in the States of Virginia and North Carolina between Richmond, Virginia and Henderson, North Carolina.

Mr. Commissioner Hooker is not present. He cannot be here.

(Discussion off the record.)

The Examiner: I should announce at this time that no free copies of the transcript will be distributed. It is necessary to order from the reporter a copy of the transcript is you desire it.

I should also announce that no persons will be allowed to appear formally to examine witnesses and participate in the hearing as counsel unless they have applied for admission to practice before the Commission, if they have ever before appeared before the Commission. Also, persons representing themselves may appear when they have an interest in the case, and members of a partnership may appear representing the partnership of which they are members; so may bona fide officers of a corporation who have an interest in the case. It is also necessary that formal intervention be made in all cases now by the [fol. 746] parties who wish to appear and participate.

The Chairman: Who appears for the applicant in this case?

Mr. Abeles: Charles T. Abeles, of Norfolk, Virginia, and Murray Allen, of Raleigh, North Carolina.

The Examiner: You gentlemen are either admitted to practice before the Commission or have a position with the corporation you represent which is that of a bona fide employee or officer?

Mr. Abeles: Both of us are admitted to practice.

The Examiner: Are there any interveners?

Mr. Watkins: Edgar Watkins, Jr., Bona Allen Building, Atlanta, Georgia, representing the Southern Motor Carriers Rate Conference. I have not yet filed formal petition of intervention. I desire opportunity to file that.

The Examiner: You may state your position on the record, with the grounds for intervention. You may file the formal petition for leave to intervene within ten days, with the Commission, serving the proper number of copies on the parties of record.

Mr. Watkins: The Southern Motor Carriers Rate Conference is an organization composed of more than 400 motor carriers operating in the territory which applicant

desires the right to operate in under the eight applications which they have pending before the Commission.

[fol. 747] Mr. Abeles: This proceeding involves an application for a certificate to operate truck service between Richmond Virginia and Henderson, North Carolina. As such, the only questions presented for consideration by this Board are those found in the issue of public convenience and necessity requiring that service, and I want to object now to all reference by counsel for protestants or any other party to any proceeding covering other services, any applications now pending before the Interstate Commerce Commission.

The Chairman: You mean you object to any testimony as to any services now provided between Richmond and Henderson?

Mr. Abeles: Oh, no, your Honor, in the statement just made by counsel for protestants, he mentioned eight applications filed by the applicants and pending before the Interstate Commerce Commission. My position is that he should not refer to those covering territory other than the Richmond-Henderson territory.

The Chairman: That would be incompetent in this hearing. We are ready for the petitioner to proceed.

Mr. Watkins: I didn't finish the statement of our position.

Mr. Abeles: Have you a ruling on that?

The Chairman: We are excluding that for the time being. We don't know what the evidence will bring forth as to [fol. 748] connecting carriers. It may have some pertinency from that standpoint.

Mr. Watkins: It was necessary for me to refer to the other applications in order for me to have my position clearly stated in the record.

The Chairman: Understand you can state your position. We will rule on the testimony, if you offer it, later.

Mr. Watkins: And all of these applications which I referred to are sub-numbered under one application number, namely, MC 86687. The applications when taken as a whole create a motor carrier operation extending from approximately Richmond, Virginia, to the Georgia-South Carolina line, north and south, and east and west, from approximately Wilmington, North Carolina, in connection with their present operations, through to Rutherfordton, North Carolina. And we are opposing the granting of any such applications or any part of these applications on

the grounds that there is no convenience and necessity for such and that the service in the territory is adequate.

The Examiner: Are there any other interveners or protestants? (No response.)

The Chairman: Mr. Commissioner Hooker, of Virginia, who is the other member of this Joint Board, is unable to be present today. The Commission is very desirous of having these cases proceeded with as promptly as pos- [fol. 749] sible, in all cases. We should like to inquire if it would be possible for the parties to stipulate that subject to such objections as they have generally to the proceedings, the Joint Board may proceed, in the absence of Mr. Hooker, upon the condition that the record will be submitted to him for inspection before he participates in the recommended report and order which may be issued by the Board.

Mr. Abeles: Mr. Chairman, though we regret his absence, that procedure is agreeable to the applicants.

Mr. Watkins: We will agree, also.

Before you call your witness, Mr. Abeles, I have a motion I would like to make. In the hearings on applications heard on June 11 and 12, evidence was introduced by applicant which indicated a desire and purpose on their part to maintain continuous motor transportation between points in three states, the States of Virginia, North Carolina, and South Carolina. We made a motion in those cases and have transmitted a telegraphic motion and a formal motion to the Commission setting out that these hearings as set before Joint Boards are illegal. And now on the same basis we ask that this hearing be postponed until such time as the Commission has opportunity of passing upon our motion to cancel all of these eight hearings and consolidate the same for hearing. I might also say that if section 205-B of the Motor Carrier Act is construed as affecting Joint rail and trucking operations, [fol. 750] these series of applications should be set for hearing before an Examiner, as operations in more than three states are involved. The formal petition has been sent to the Commission, and I have a copy here for the Joint Board.

Mr. Abeles: Might I be heard on that very briefly?

The Chairman: Yes, sir.

Mr. Abeles: It is my understanding from the proceedings which have preceded this, that it is the intention of coun-

sel for the intervening protestants to file a brief upon the issues raised by his motion. Is that correct, Mr. Watkins?

Mr. Watkins: That is correct, unless I get it acted on before.

Mr. Abeles: In view of the opportunity which will be afforded through that brief to present to the Board and the Commission the applicant's views upon the questions raised by the motion, I shall not at this time delay the proceedings by arguing the motion at length here. I might say very briefly that it seems entirely clear to us under the language of section 205-B, of the Motor Carrier Act of 1935, that Congress did not intend to require the Commission when presented with an application, in defining specific physical limitations to inquire into whether or not the granting of a certificate over the routes specified in the application might make it possible for the applicant either through existing motor truck services or [fol. 751] existing rail carrier services, to perform continuous transportation over routes other than that specified in the application, either wholly by motor carrier or partly by motor carrier, partly by rail. If that had been the intent of Congress, it would have been virtually impossible for the Commission in setting cases of this character for hearing, to determine whether in conformity with the requirements of the Federal Motor Carrier Act it should submit the hearing before a Joint Board composed of one or two or three members, or before an Examiner, because it would have had to have taken into consideration potential services, the nature of which is not disclosed by the application and which it would have been impossible for the Interstate Commerce Commission to determine. That problem is impossible of practical solution in advance of the hearing. If allowed by the Commission in the manner insisted upon by counsel for the intervening protestants, it would have injected into the proceedings under the Federal Motor Carrier Act such inextricable confusion which would make it impossible to proceed under the Act.

Mr. Watkins: Mr. Commissioner, may I point out that Docket MC 86687, subs. 1, 2, 3, 4, 5, 6, and 7, are all headed "extension of present operations". So I assume that the applicant, himself, expects that by the use of these seven applications to extend his present motor car- [fol. 752] rier operations between Monroe and Hamlet,

which he holds, I understand, by virtue of grandfather rights. So it seems to me that in order for the Commission to get a complete and accurate picture of the service which could be performed by applicant under these applications, that it is necessary to have evidence concerning the entire operation, and there is a certain amount of evidence that would have to go into each of these cases that is a duplication; and having these eight separate hearings is going to cause great additional expense to the Commission and the parties involved, and is going to cause the application as a whole to be passed on by four different Joint Boards, without any coordinated evidence as to the effect of the whole.

Mr. Abeles: Mr. Chairman, all I have to say in reply is to repeat what I stated at the outset, that in view of the opportunity that we shall have to argue this matter fully on briefs before the Commission, I shall not consume the Board's time by further argument.

The Chairman: We would like to agree with you, Mr. Watkins, and it probably would have been a better arrangement if all of these cases had been consolidated; but the fact is that they have not been by the Interstate Commerce Commission there is only one case that we have before us today. That is the application of the Seaboard [fol. 753] for a certificate of convenience, and necessity from Richmond to Henderson. So far as this Board knows from this application, without going into extraneous matter which cannot be brought before it as evidence in this case, certainly on a motion, we might grant or refuse to grant this application, and it would not affect the other applications one bit. There is no suggestion before this Board that if this application is denied, that they will not continue in their effort to get applications that you referred to over other routes. On the other hand, it is perfectly conceivable that if all the others are denied and this application is granted, that they will operate. If there was any suggestion from the petitioner that unless they received applications over all the routes, they wouldn't want any, why then we would have another view of your motion; but as I understand it, there is no suggestion or intimation of that sort coming from the petitioner in this case and the Board overrules your motion.

Mr. Watkins: May we have an exception noted?

The Chairman: Yes, sir. Note the exception by the protestants.

Mr. Abeles: Apropos to the Chairman's last statement, I might assure the Board that every one of the applications referred to by counsel for the intervening protestants is a separate and independent proposal and that we will desire the granting of each application regardless of [fol. 754] the action taken by the commission on any of the others. I think the evidence will bring that out very clearly.

The Chairman: All right, gentlemen. Proceed.

Mr. Abele: I will call the first witness, Mr. Terrell.

H. M. Terrell was sworn and testified as follows:

Direct examination.

By Mr. Abele:

Q. Mr. Terrell, state your name, residence, and occupation.

A. H. M. Terrell, Raleigh, North Carolina, Superintendent for the Virginia Division of the Seaboard Air Line.

Q. What comprises the Virginia Division?

A. The territory from Raleigh to Richmond, and Portsmouth, with the Branch lines between these points.

Q. Mr. Terrell, you are familiar, are you not, with the proposal of the receivers of the Seaboard Air Line to establish the truck service for which they have applied in this proceeding?

A. Yes, sir.

Q. Will you describe that truck service, stating first its termini?

A. The proposed truck service is to operate between Richmond, Virginia, and Henderson, North Carolina, terminating at these points.

Q. That is a movement in both directions, is it?

[fol. 755] A. Yes, sir.

Q. Will you state now the purpose of the receivers in seeking the authority to establish this service?

A. The purpose is to advance the delivery of less than carload freight at intermediate points between Richmond and Henderson.

Q. Now, will you state how that is to be accomplished?

A. By having a truck to leave Richmond——

Q. Let me interrupt you there, Mr. Terrell. Will you first state what train service, local train service, is now performed between Richmond and Henderson by the receivers?

A. There will be two divisions of that. One local service between Richmond and Norlina, this train leaves Richmond at 6:25 a. m.; arrives at Norlina at approximately 4:15 p. m. Between Norlina and Henderson there is another train which leaves Norlina at 11:15 a. m., arrives at Henderson approximately 2:00 p. m.

Q. On the reverse direction, is there any train service?

A. There is no local service in the reverse direction.

Q. There is no local service performed between Henderson and Richmond?

A. Not handling less carload freight.

Q. That is what I mean. Now, what will your proposed truck schedule be?

A. One truck will leave Richmond at 12:00 a. m., arrive [fol. 756] in Henderson at 8:00 a. m. Northbound trucks will leave Henderson at 7:00 a. m., arrive at Richmond at 4:00 p. m.

Q. Will those two services be covered by different trucks?

A. Yes, sir.

Q. And different crews?

A. Yes, sir.

Q. Now, with those schedules before us will you describe how the purposes the receivers have in mind in seeking the authority for the establishment of this truck service will be accomplished?

A. Well, the truck that leaves Richmond at 12:00 a. m. will have all the freight for intermediate points between Richmond and Henderson. It will not have the Henderson proper freight. This truck will also load at Petersburg the freight for these intermediate points excluding Henderson and unload this freight at the stations as it passes the stations.

Q. You mean the destination stations?

A. The destination stations; and the northbound truck will handle the freight from Henderson which will include the freight from Raleigh and points south, and from Portsmouth and the connections into Portsmouth which will move into Henderson during the night.

Q. By train?

A. By train.

Q. This freight will then be handled by this truck leav-
[fol. 757] ing Henderson at 7:00 a. m., with distribution?

A. Correct.

Q. Handled by this truck to be unloaded into the stations between Henderson and Richmond for which it is destined?

A. That's right.

Q. Now, your southbound truck leaving Richmond at approximately midnight, I believe you said, would reach Henderson and all intermediate destinations early in the morning?

A. Yes, sir.

Q. Your northbound truck leaving Henderson at 7:00 a. m. will arrive in Richmond and all intermediate destinations not later than 4:00 p. m.?

A. That is correct.

Q. Now, will you give us a specific example of how the performance of our deliveries of less than carload freight will be improved by the utilization of the proposed truck services?

A. From station to station?

Q. Yes, sir.

A. At the present time a shipment, we will say, from Henderson to McKinney, will reach McKinney—I will make that plainer. Shipments placed in the warehouse in Henderson today, for transportation to McKinney under the present schedule will reach McKinney at approximately 11:30 a. m.

Q. By train?

A. By train.

Q. You mean 11:30 a. m. when?

[fol. 758] A. The next day at 11:30 a. m. Under the proposed plan this shipment will reach McKinney at approximately 1:30 p. m. the next day. It would be some delay with shipments of that kind; but a shipment, we will say, moving from Richmond to McKinney, which under the present play, reaches there at 11:30.

The Chairman: What time does it leave Richmond?

The Witness: 6:25 a. m.

By Mr. Abele:

Q. Just a moment I think we are going too fast. Just assume a shipment delivered at our station at Richmond in the middle of the day, will you follow the course of that shipment under our present service?

A. Our present service has to leave Richmond at 6:25 a. m., the following morning.

Q. Tomorrow morning?

A. Yes. And reach McKinney at 11:30 a. m. tomorrow. Under the proposed plan this shipment would leave Richmond at 2:45 a. m. tomorrow, making it ready for delivery, any time after 8:00 a. m. tomorrow.

Q. Now, are there other improvements in service which will result from this proposed truck service?

A. Yes, sir.

(Discussion off record).

A. Under our present plan of handling freight, a shipment loaded at Portsmouth any time today, will be loaded [fol. 759] and forwarded to Henderson tonight.

Q. By train?

A. By train, yes. And would be transferred from one car to another tomorrow, and would not be delivered at McKinney until 11:30 a. m. day after tomorrow. Under the proposed plan, shipments loaded at Portsmouth today would move to Henderson that night by train to be transferred to the truck and delivered to all points between Henderson and Richmond the next day from 7:15 a. m. between 7:15 a. m. and 4:00 p. m.

Q. Making a saving of how much in delivery time?

A. At least 24 hours, and in some few cases 36 hours.

Q. Now, let us take the shipments moving from Richmond to points between Norlina and Henderson, give us an example of the effect of the proposed truck service upon such movements?

A. Shipments placed in warehouses today at Richmond under the present plan would move to Henderson that night and would not be delivered to these points.

Q. What points?

A. The points between Norlina and Henderson, unless we had delivery between 11:15 and 2:00 p. m.

Q. That is what delivery, second morning or third morning?

A. Third morning.

Q. Now, what are the plans as to such shipments under the proposed service?

[fol. 760] A. The proposed service is that the shipments placed in warehouses today would be delivered at all stations between Norlina and Henderson, prior to 8:00 p. m. the next day.

Q. That would be a saving of how much?

A. A saving of approximately 36 hours.

Q. What effect will the proposed service have upon the movement of your local freight trains, if any?

A. They will be advanced some, not a great deal on account of not having to stop and load and unload less carload freight at the intermediate points.

Q. How many local stops will be eliminated in that way?

A. Approximately 10 per day.

Q. In one direction?

A. Yes, sir.

Q. You have a local freight service only in one direction. I understand that is southbound?

A. Yes.

Q. From Richmond what will be the effect of the proposed service on traffic from Petersburg consigned to points beyond Richmond, north of Richmond?

A. That would make no change in freight points north of Richmond.

Q. Can you give us an example of such traffic loaded at Richmond today consigned for points beyond Richmond, north of Richmond?

[fol. 761] A. You say Richmond, you mean Petersburg? The freight loaded at Petersburg today, for points north of Richmond, moves into Richmond by train that night, and the cars, if they go to our warehouse at that point, are worked the next day and are delivered to connections by 4:00 p. m. for forwarding on their trains that night.

Q. The proposed truck service will not advance that movement in any respect?

A. No, sir.

Q. Now, Mr. Terrell, has this proposed service been scheduled in such a way as to or with a design to connect with or integrate with any other service now established or to be established, by truck, or is this a separate and independent operation?

A. This is a separate and independent operation.

Q. And its purpose is to serve the territory, the local territory intermediate between the termini of the proposed truck service only?

A. That is the only thing that it is proposed to establish it for.

Q. Mr. Terrell, at Richmond, do we receive freight from North Carolina connections?

A. To some extent, yes, sir.

Q. I'm speaking now of less than car load freight which would be carried by these trucks?

[fol. 762] A. Yes, sir.

Q. And incidentally will we carry any car load freight on these trucks at all?

A. No, sir. Less car load freight.

Q. You have, I believe, movements from Richmond south, the service with respect to which will be improved by the proposed truck service. Will that apply not only to traffic delivered to the Seaboard at Richmond but also that received from North Carolina connections?

A. Yes, sir. Any freight that moves through the stations at Richmond or Petersburg for the intermediate stations will be improved.

Q. Mr. Terrell, I believe you stated that the movement of the northbound less than carload movements, shipments would not be substantially improved by the proposed truck service, is that correct?

A. Well, our reply was freight north of Richmond would not be substantially improved. Those for Petersburg or Richmond would be improved by 24 hours, that is shipments from these local stations.

Q. Mr. Terrell, you stated, I believe, that you had no local northbound train service?

A. Yes.

Q. Can you tell us how less than carload shipments moving from some intermediate points on this route, for example Greystone, just north of Henderson, would be [fol. 763] moved under the present service to Petersburg or some other intermediate point north of Greystone?

A. Well, let's take perhaps a smaller station, well McKenney. A shipment from Greystone which was placed in the warehouse there prior to 1:30 p. m. would be loaded in a car moved to Henderson, transferred to a car which would be billed at Petersburg, leave Henderson, by 9:00

p. m., move to Petersburg, arriving there about 4:00 a. m., and leave Petersburg at 8:30 the next morning, by this local, be unloaded at McKinney at approximately 11:30 the next day.

Q. That would involve then a back haul to Henderson from Middleburg?

A. From Greystone.

Q. From Greystone then, a North Carolina movement to Petersburg, and a second back haul to McKinney?

A. That's correct.

Q. And two interchanges?

A. Yes.

Q. Two transfers, is it?

A. One transfer. It would not be transferred at Petersburg.

Q. It would be hauled in the same car?

A. Yes.

Q. One transfer at Henderson?

A. Yes.

Q. Now, how would it move by the proposed truck service?

[fol. 764] A. By the proposed truck service shipment will be picked up at Greystone by the truck and 7:15 a. m., the next day; move into McKinney, reaching there at 1:30 p. m., the second day after it is placed in the warehouse.

Q. Second?

A. Yes, the second morning delivery.

Q. In establishing this truck service, Mr. Terrell, will there be any stations immediately between the termini, Richmond and Henderson, which will be used for the purpose of receiving and delivering freight to be carried by the truck from the trains. In other words, are there any so called lay off stations which we propose to use in connection with the proposed truck service?

A. No, sir.

Q. There would be no lay off service?

A. No, sir.

The Chairman: Mr. Terrell, let me ask you this question. You are contending now that less carload shipments moving from Greystone to McKinney that it would go to Henderson and then come back to Petersburg and then it would be sent from Petersburg back to McKinney?

The Witness: Yes.

By Mr. Abele:

Q. Having two double hauls a day, each end?

A. Yes.

Q. You don't have any such movements as that though, do you?

[fol. 765] A. We have a few, Mr. Winborne. We do have. Every now and then there will be a shipment from one of these small stations to one of these small stations.

Q. That is a very rare thing though, isn't it?

A. No, sir. It isn't rare. I would say we have an average of two shipments a day, small shipments.

Q. Two a day?

A. Yes, sir.

Q. You don't have much less car load business between Richmond and Henderson any way at intermediate points, do you?

A. Yes, sir. Two or three of the stations are heavy. The others are very light.

Q. Which are the heavy ones?

A. Well, McKinney has fairly heavy, Dinwiddie, Alberta and LaCrosse, those four have some.

Q. How about Norlina?

A. Norlina is fairly heavy.

The Chairman: You say you have only one less car load train coming from Richmond to Henderson a day?

The Witness: Yes, sir.

The Chairman: None going from Henderson to Richmond?

The Witness: Yes. McKinney. We load at Henderson, everything for points from Petersburg to Norlina, moves up in a through train that night and connects with this local coming back the next day, makes just the same time [fol. 766] as if we did have double daily service.

By Mr. Abele:

Q. That is all. I mean as far as movements north from Henderson to points between Henderson and Norlina, a back haul the following day from Norlina?

A. Yes, sir, from Petersburg.

Q. From Petersburg?

A. Yes, sir.

Q. Mr. Terrell, have any carload movements been carried by these trucks?

A. No, sir.

Q. They will continue, I understand, to move entirely by rail?

A. That is correct.

Q. And the proposed truck service then will be utilized exclusively for less carload shipments?

A. That's correct.

Q. Is it your purpose to continue to use rail service for all shipments except those on which the deliveries can be improved by the proposed truck service?

A. Yes, sir.

Q. And I understand you to say that the sole purpose you have in mind in establishing this truck service is to coordinate with our existing rail service?

A. That is correct.

Q. Will you state what in your opinion will be the effect [fol. 767] of this proposed service in its competition with existing independent Motor Carriers on any route?

A. I don't know that I can answer that, Mr. Abeles. This is just to advance the movement of the freight that we are now handling. I don't think it will have any effect on the other business being sent by truck.

Q. Is it our purpose or in your opinion will the result from this proposed service be that we will invade the field now occupied by Independent Motor Carriers?

A. No, sir. That was not the purpose in establishing this service.

Q. Do you see any reasonable possibility of such a result?

A. No, sir. I don't.

Q. We propose merely to handle through these trucks, traffic now moving by rail, do we not?

A. Yes, sir.

Q. Do you propose to serve any points or territory other than the stations now served by rail?

A. No, sir.

Q. Which will not depart from our rail route in any respect?

A. No, sir.

Q. Does the highway which we propose to use closely parallel the rail lines?

A. Yes, sir.

Q. Throughout the entire route?

[fol. 768] A. Yes, sir.

Q. Mr. Terrell, have you any figures upon which you make an estimate of the cost of performing this truck service?

A. The only figures I have of the cost on the operation of a truck between Henderson, is between Hamlet and Monroe, which I procured for the purpose of making an estimate as to the cost.

Q. How long has that service been in operation?

A. About three years, I think, I'm not sure of that.

Mr. Watkins: May I ask a question here for the purpose of objecting?

Mr. Abeles: Yes.

Mr. Watkins: Is that Monroe-Hamlet operation in your division?

The Witness: No, sir.

Mr. Watkins: Did you make these figures?

The Witness: No, sir.

Mr. Watkins: Mr. Commissioner, I object to his testifying, concerning that.

The Chairman: The objection is overruled and exceptions.

Mr. Watkins: May we not have exceptions?

The Chairman: Exceptions, yes.

By Mr. Abeles:

Q. Proceed with your answer, Mr. Terrell.

A. Well, do you want me to go into details with it or just the cost per mile?

[fol. 769] Q. The cost per mile.

A. The cost per mile there averages 15.3¢ per mile.

The Chairman: 15.3¢.

The Witness: Yes.

By Mr. Abeles:

Q. On the basis of 15.3¢ per mile, will you give us the approximate estimate of how much this truck will cost per month and per year?

A. That will be per month approximately——

The Examiner: That is the truck from Richmond to Henderson?

Mr. Abeles: Yes.

The Examiner: Not Hamlet and Monroe?
Mr. Abeles: No.

(Discussion off record.)

The Witness: Of the entire service it would be about the rate of $1025 per month.
The Chairman: How much?
The Witness: $1025 per month.

By Mr. Abeles:

Q. Slightly more than $12,000 per year?
A. Yes, sir.
Q. Now, do you know the type of truck that has been operated on the Hamlet-Monroe line?
A. Only from this record that I received.

Mr. Watkins: Mr. Commissioner, it seems to me this is more or less hearsay testimony.
[fol. 770] The Chairman: I think he proposes to show they have determined also from their records, which we have admitted, operating cost per mile. Now, he proposes to show the type of truck used between Hamlet and Monroe. The purpose of showing it, I assume, is that the same type of truck will be used from Richmond to Henderson.
Mr. Abeles: Exactly, that these figures are conservative and have a sound basis.
Mr. Chairman: I think that would be competent.

By Mr. Abeles:

Q. Have you any reason to believe the cost of 15.3¢ per mile expended by the Hamlet-Monroe truck line will be exceeded by the truck which you propose to use on the Richmond-Henderson route?
A. No, sir. I figure that ours would run about the same thing.
Q. Are you going to have the same size trucks?
A. No, sir. We are figuring on using a lighter truck than they use there.
Q. Does it cost more or less than the truck used on the Hamlet-Monroe line?
A. Do you mean to operate?
Q. No, the initial cost?

A. I don't know what the initial cost is. I can't answer that.

Q. Now, the figure of fifteen and a fraction cents per [fol. 771] mile, on the basis of which you have made an estimate, includes what costs?

A. It includes taxes, insurance, licenses, drivers' salaries, fuel, lubricants, tires, repairs and other supplies.

Q. And does it include the depreciation on the truck?

A. Yes, sir, depreciation and interest.

Q. At what rate?

A. At 6%.

Q. You mean the interest on the investment?

A. Yes, sir.

Q. At 6%?

A. Yes, sir.

Q. Do you happen to know whether the cost figure which you have used was developed throughout the entire life of the truck used on the Hamlet-Monroe route?

Mr. Watkins: I want it understood, Mr. Commissioner, that I'm objecting to all of this testimony that this witness is giving about the details of these cost figures, in that he has already testified he did not make those cost figures and it was not under his jurisdiction.

The Chairman: Do you know those details were considered in arriving at the cost figures?

The Witness: I have a statement from the superintendent who handled that.

The Chairman: He gave you a statement showing what [fol. 772] made up the 15.3¢ per mile?

The Witness: Yes, sir.

The Chairman: He is Superintendent of the Seaboard Air Line?

The Witness: That is correct.

Mr. Abeles: Mr. Chairman, I can have the witness state details of items entering into this total, in the interest of expedition—I thought it wouldn't be necessary.

The Chairman: The protestants move to strike out all the testimony of Mr. Terrell as to the cost of operating the truck from Monroe to Hamlet. The motion is denied.

Mr. Watkins: We will take exception.

The Chairman: That preserves your right?

Mr. Watkins: That's right.

By Mr. Abeles:

Q. Who had the last question?

(The question is read.)

By Mr. Abeles:

Q. Do you understand the question?

A. The information that I have is that it was.

Q. Was the truck retired at the end of the period for which these cost figures were compiled?

A. The statement shows that it was.

Q. And does the depreciation entering into this cost per mile reflect the salvage value of that truck?

A. Yes, sir.

Q. You might state the salvage value?

[fol. 773] A. $250.

(Discussion off record.)

The Chairman: Are these estimates which you have just testified made from cost figures which you know to be records of the Seaboard Air Line Railway Company?

Mr. Abeles: I'm glad you asked that question, Mr. Chairman. Can you answer that Mr. Terrell?

The Witness: Yes, sir. They were made from the figures in the auditor's office at Hamlet.

By Mr. Abeles:

Q. And by whom was the statement compiled?

A. By the division auditor at Hamlet.

Mr. Abeles: Does that answer your question?

The Examiner: Yes, sir.

The Chairman: Mr. Terrell, can you give us the gross revenue from less carload freight between Henderson and Richmond, for two typical months of this year?

The Witness: I don't have it divided that way.

(Discussion off record.)

Mr. Abeles: Might I in the interest of clarity ask whether you refer to the gross revenue received on all, and forwarded rather than received? I understood your question to say received, did it not?

The Chairman: No, all revenue from LCL freight between Richmond and Henderson.

Mr. Abeles: That is both received and forwarded?

[fol. 774] The Chairman: Both received and forwarded, regardless of its origin and destination.

Mr. Abeles: We can give you that. The reason I asked that question is because it is quite clear that that would reflect revenue on shipments at those two points which was either consigned to or originated at points far removed from the territory involved here.

The Chairman: If you could segregate that and give us the actual revenue apportioned to that division on less carload shipments, we would rather have it.

Mr. Abeles: The freight, we haven't got that. I'll let the witness answer that.

The Witness: I don't have it in that form, no, sir.

By Mr. Abeles:

Q. What have you, Mr. Terrell?

(Discussion off the record.)

Mr. Abeles: I think that is clear. If it isn't we want to make it entirely clear that the figures the witness will give you for Richmond and Henderson include the Seaboard revenue to and from all points, regardless of whether they are points on the route involved in this proceeding or elsewhere throughout the system.

The Chairman: You have no way of segregating the origines, you have not done so?

The Witness: No, sir.

The Chairman: These are less carload shipments, now?

[fol. 775] The Witness: Yes, sir.

The Chairman: All right, sir.

Mr. Abeles: Do you wish those with that understanding, Mr. Chairman?

The Chairman: Yes, if that is the best you can give us.

The Witness: Mr. Winborne asked for a two months' period.

The Chairman: Any you select.

The Witness: The 11-month period we have worked up. I didn't prepare these figures. They came from the auditor's office.

Mr. Abeles: It was Richmond and Henderson you wanted was it?

The Chairman: Yes.

By Mr. Abeles:

Q. Did you give the date of this period?

A. This period is from February 1, 1936, to December 31, 1936.

Mr. Abeles: Do you want all the intermediate stations?

The Chairman: I thought he was going to give the total less carload revenue between those points.

Mr. Abeles: For all stations between those points?

The Chairman: Yes.

Mr. Abeles: Mr. Chairman, I have a statement here showing that information, and I would be glad to introduce it as an exhibit.

The Chairman: All right.

[fol. 776] (Exhibit No. 1, Witness Terrell, is marked for identification.)

By Mr. Abeles:

Q. Mr. Terrell, I understood you to say that at least a part of the less carload freight shipments which will be carried by the proposed truck service will come from connections of the Railway, north of Richmond, is that correct?

A. That is correct, yes, sir.

Q. And that traffic, that less carload traffic of which we are now speaking, is shipments consigned to points to be covered by the proposed truck service, is that correct?

A. That is correct.

Q. Now, is that the traffic, Mr. Terrell, which is today carried by the trucks? Do you see what I mean?

A. No, sir. It is freight which is delivered to us by the connecting railroads at Richmond.

Q. And is that true with respect to all other traffic for the transportation of which we are proposing to establish this truck service?

A. Yes, sir. We are proposing to establish the truck service to take care of the less carload business now being handled by us. We figure it will be handled by the use of the trucks put on.

Q. At the risk of some repetition, but in order to clarify the record, I would like to ask you again whether it is our [fol. 777] purpose in establishing the proposed truck service to carry any traffic which is not now carried by rail?

A. No, sir. It is not.

Q. Mr. Terrell, if the suggestion were made that there are now operating between Richmond and Henderson, Independent Motor Carriers and that we could accomplish the purpose that we have in mind in establishing the service for which we are here seeking authority, by utilizing those independent existing agencies, what would you say as to that suggestion?

A. I would say that we should not do that, sir.

Q. Why?

A. For various reasons. We would not have exclusive control over the truck schedules; for that reason, we would lose the element of flexibility of service not being able at all times to adapt the truck service to conform to our train service, and connections.

Q. Is that an important factor to us?

A. Yes, sir, it is.

Q. Why?

A. At various times for some purpose or some reason we might have to change schedules, we would want to change our truck operations, of course, to meet it.

Q. Go ahead.

A. And the other truck line that was handling it for us they would probably have their schedules set up to meet [fol. 778] some other conditions and maybe we couldn't get it changed at the same time.

Q. And if we could not control the schedules, would we be able to accomplish the purpose we have in mind?

A. No, sir, that would defeat the very purpose for which we are putting on the trucks.

Q. Because as I understand it this whole plan will revolve around the coordination of our rail and truck service?

A. Yes.

Q. Is there any other reason why we could not practically employ independent motor carriers?

A. We would not have direct supervision over the drivers or other employees on the trucks and we would be unable to properly supervise the service that they render, or to take any disciplinary action in case the trucks were

not properly handled or the freight is not properly handled, which we would be turning over to the competitor some business that we were in business to handle, short-hauling ourselves; and we don't think any company deliberately does that.

Q. Any other reasons?

A. We would be making available our records so far as business moving and give the competitor a chance to solicit business that we were handling.

Q. Is that either sound transportation practice or a practice which has any precedent within your knowledge?

[fol. 779] A. Not any precedent within our knowledge. We don't try to make those things public.

Q. Do we even do that with our rail competitors?

A. No, sir, we do not.

Q. Is there any other reason?

A. Another reason would make it almost impossible to have an accounting system to divide the revenues. I don't know how we would ever work it out so that we could make a proper settlement.

Q. For the revenue, you mean?

A. To divide the revenues.

Q. Would it have any effect upon possible claim for loss or damage?

A. Yes, sir. That would be quite an item to determine where the damage occurred, especially in case of concealed damage or loss.

Q. And would it have any effect upon the number of interchanged necessary on this less carload traffic?

A. Yes, sir. That would mean that many more interchanges.

Mr. Abeles: That is all.

(A short recess was taken.)

Mr. Abeles: I think we can give you fuller and more expansive answers to your inquiry if you will permit us to recall Mr. Terrell for just a few minutes.

The Chairman: All right.

[fol. 780] Mr. Abeles: Your inquiry involves the volume of tonnage which will be handled by intermediate stations by these trucks.

The Chairman: Very well.

By Mr. Abeles:

Q. Mr. Terrell, the Chairman asked you whether or not we had any information showing the volume of shipments made to and from the stations intermediate between Richmond and Henderson which would be transported by the truck service if established. I understand that is the question you asked, Mr. Winborne?

The Chairman: That is right.

By Mr. Abeles:

Q. Have you been able to develop that information?

A. Yes, sir.

Q. We have introduced as exhibit No. 1, a statement showing the less carload freight received and forwarded at Richmond and Henderson and intermediate points for the 11-months' period from February 1, 1936, to December 31, 1936. Do I understand that you have made the computation which you are about to give from that statement?

A. Yes, sir.

Q. Now, how did you arrive at those figures?

A. We deducted the tonnage handled at Richmond and Henderson and using the tonnage at the intermediate stations.

Q. Why have you deducted the tonnage at Richmond and Henderson?

A. Because we do not figure to handle that by truck. [fol. 781] We are figuring to continue to handle that in cars.

Q. Now, proceed.

A. This figuring it this way, it shows that these intermediate stations will receive approximately 12 tons per day, and forward approximately the same amount.

The Chairman: Receive 12 tons a day and forward approximately the same amount?

The Witness: Yes.

By Mr. Abeles:

Q. What revenue would accrue to the Seaboard on that business approximately?

A. Taking this same statement and figuring it the same way, it would amount to about $4000 per month.

Q. And your operating expenses of this truck, I believe you stated, were approximately what?

A. $1000.

Q. About $1000 for what period?

A. A month.

Mr. Abeles: Is there any further information the Chairman would like?

The Chairman: I think not.

Cross-examination.

By Mr. Watkins:

Q. Mr. Terrell, that includes the tonnage to and from Petersburg?

A. Yes, sir.

Q. Wouldn't there be about as much reason to exclude the [fol. 782] tonnage to and from Petersburg as to exclude Henderson and Richmond?

A. No, sir. We wouldn't because we expect to handle from this territory from and to Petersburg on a truck.

Q. And that $4000 is for freight moving within this territory and not beyond it?

A. Yes, sir. That is correct. That is the approximate figure.

Q. Do you mean that figure is the gross revenue on the tonnage in and out of these points?

A. That is correct.

Q. Seaboard revenue?

A. Yes, sir

Q. Regardless of origin or destination?

A. Yes.

Q. So it would cover, for instance, freight that moved from Washington, D. C., to Norlina?

A. Yes, sir

Q. The Seaboard, of it?

A. Yes, sir.

Q. Therefore the properly allocated part of the gross revenue to this truck haul would be less than $4000, would it?

A. Let's see if I understand that. That would be the Seaboard Revenue accruing on freight moving by truck into these points. Of course, some of that would previously [fol. 783] have been moved by rail, if that is what you mean?

Q. Yes. Therefore in order to find out the effect of this particular segment it would be necessary to reduce this $4000 a month by some amount?

A. Yes, sir

Q. Would it?

A. Yes.

Q. Have you got any estimate as to approximately how it should be reduced?

A. No, sir. I haven't those figures available. It would be somewhat less.

(Discussion off the record.)

By Mr. Watkins:

Q. Would the Seaboard Railroad earn $4000 per month from the freight that is moving on this truck?

A. Yes, sir. It would earn that much, but some of that revenue, of course, would cover the movement prior to the time it was placed on the truck. If that is the way to answer that.

The Chairman: The truck alone would not earn $4000 per month, is that what you mean?

The Witness: Yes. The truck alone would not earn $4000 per month.

By Mr. Watkins:

Q. Is there any way you could take this 12 tons per day moving in and out of this area and estimate the amount of that, that would move entirely by the truck service under proposal?

[fol. 784] A. No, sir, not from any statement that I have so far.

Q. Well, generally speaking, does the freight in and out of these points move from and to these points or does it move from and to other points?

A. From and to other points,

Q. Then the larger portion of the freight would move from and to other points than on this particular division?

A. No, sir. I wouldn't say a larger portion of it. I would say that 70 per cent of the freight would move into this territory from local Seaboard stations, that is Richmond, Norfolk, Henderson, Raleigh, and the other would come from foreign lines.

Q. What I'm speaking about, Mr. Terrell, when I was speaking of the local freight, I was speaking of freight local to the area you are going to serve by truck as against freight moving from and to other points. Could you estimate the division on that basis?

A. Well, that is what I mean, sir, by the 30 and 70 per cent.

Q. As I understood it when you said 70 per cent you said from Norfolk and other points not included on this list?

A. Yes, sir. But it still moves in by truck.

Q. It wouldn't move all the way by truck, would it?

A. Well, it would move all the way by truck, I would still say 70 per cent. No, not that much, I would say 60 per cent, because in this particular territory most of the freight is from Richmond and Petersburg.

[fol. 785] Q. That is where it originates?

A. Yes, sir

Q. So 60 per cent then, about 60 per cent of this $4000, would represent that that was earned by the truck alone?

A. The approximate figure, that would be as near as I could get to it, yes.

Q. That is $2400 a month?

A. Yes.

Q. Now, these figures as I understand it are your gross revenue figures?

A. Gross Seaboard revenue.

Q. Gross Seaboard revenue?

A. Yes.

Q. How does your net revenue relate generally on the Seaboard system to the gross revenue?

(Discussion off the record.)

By Mr. Watkins:

Q. The last question was how does the net revenue generally relate to the gross revenue?

Mr. Abeles: In view of the fact that the witness has testified that approximately 60 per cent of the gross revenue which he has stated would accrue from the receipts and delivery at these local points, and that we have shown the cost of operating this truck per month, it seems to me that the question which counsel has just now asked, namely, the proportion of gross revenue throughout the system

[fol. 786] which would constitute net revenue is entirely irrelevant because the net would be represented by the difference between the gross revenue earned, strictly, and specifically by the truck operations and the cost of operating that truck itself.

The Chairman: The answer would be from his testimony, $1400 per month, approximately?

The Witness: Yes, sir.

The Chairman: I think that answers that.

Mr. Watkins: I don't think so at all, Mr. Commissioner, because it has been testified to in this hearing that they did not contemplate the removal of any rail service, but they want to inaugurate a truck service. Their cost of operating rail service is not going to be decreased at all under their proposals, but they are going to add an additional $1000 per month to handle the same traffic they are now handling.

The Chairman: You might ask him about the cost of the rail service. You had not asked him about that.

Mr. Watkins: That is why I wanted to get this figure in the record, as to the relation between gross and net income. Can you answer that question?

The Witness: No, sir.

By Mr. Watkins:

Q. You can testify as to the revenues and everything on your Division, but you don't know what you- Division earns?

A. No, sir, not in that shape; no, sir.

[fol. 787] Q. What is the net operating income of your Division?

A. I haven't those figures available, sir. I can get them.

Q. Would you please supply the record with the gross operating income from your entire Division and the net operating income from your entire Division?

(Discussion off the record).

Mr. Abeles: I have no objection whatsoever to the witness furnishing that information if it is available; but before any action is taken on that request, I would like to explore whether or not it is available in any form which would be significant or material to what counsel has in mind.

The Chairman: The Board would be very glad to have

that information as it has never been able to procure it before. If the company could get it now, it would serve us well.

Mr. Abeles: In order to determine whether or not the information is available, might I ask the witness at this point a question or two?

Mr. Watkins. Yes.

Redirect examination.

By Mr. Abeles:

Q. Mr. Terrell, do you know of any data available from the accounting records or elsewhere which would furnish you the net cost of transporting less carload shipments on your Division?

[fol. 788] A. No, sir.

Q. Or the proportion between the gross revenue earned from less carload shipments, and the cost of transporting those shipments?

A. No, sir. I do not.

Mr. Abeles: It seems to me, therefore, Mr. Chairman, the answer to Mr. Watkins' request is that we have no data which would answer his inquiry.

The Witness: I would like to state that I did not understand your question as applying to less than carload business.

Mr. Watkins: If you can't give it to us for LCL business, give it to us on all business.

The Witness: I don't know whether I can do that. I will see if I can.

The Chairman: I would like to have it if you could furnish it.

The Witness: I don't know whether I have it. We will see what we can do. We don't keep our records in that shape.

Mr. Abeles: I can say this, Mr. Chairman, that within my knowledge it has never been found possible to determine the exact cost of transporting a particular commodity or class of shipment; and that no accounting methods yet devised have been able to furnish information to the Commission by which that could be accurately computated. I [fol. 789] think that the Examiner is familiar with that fact.

Mr. Watkins: I can state that within my knowledge, when

shippers were asking for reduced rates on LCL traffic, that rail representatives have always said they knew they were losing money on it.

Mr. Abeles: That is quite a different proposition from giving him the exact cost of transporting that.

The Chairman: You may proceed.

Mr. Abeles: In response to that observation, I might say that being a fact, one of the primary purposes of what we are seeking here is to reduce those losses.

Mr. Watkins: That is obvious.

Recross examination.

By Mr. Watkins:

Q. Now, Mr. Terrell, you spoke of some of the difficulties of interchanging freight with Motor Carriers?

A. Yes.

Q. One of them was the number of interchanges. Would there be any difference in the number of interchanges in handling traffic that moves into a point like Henderson by rail and out by truck if it was your own truck, than if it were somebody else's truck?

A. Yes, sir. As I see it there would be quite a difference.

Q. What?

A. Because we would not try to make any division in the revenue.

[fol. 790] Q. I'm speaking now simply of the number of interchanges. Take them up in the order which you spoke of them. You said the number of interchanges would be increased?

A. Yes.

Q. How would it be increased?

A. I said transfers.

Q. How would that?

A. Increases in transferring from one company to another instead of to our own trucks.

Q. Would there be any difference in the physical handling?

A. Yes, sir. The truck people, I naturally assume, would want to load their freight, including checking into their car instead of being handled by our force.

Q. If they brought their truck to your platform and the freight was put on it, what difference in the physical han-

dling of the traffic would there be than in handling it on your own truck?

A. Difference in checking it by the truck people as against one check by our own people. That is the only difference.

Q. The only difference would be a double check instead of single check?

A. Yes.

Q. That is the basis of your statement about additional transfers?

A. Yes, sir.

[fol. 791] Q. Your next observation was loss and damage, particularly concealed damage?

A. Yes.

Q. You interchange with other railroads, do you not?

A. Yes.

Q. You have the same difficulty there?

A. Yes, sir. Well we have the same difficulty, but a setup rule as to how the settlements will be made.

Q. If similar rules were set up here, there would be no difference there, would there?

A. No.

Q. That is purely a matter of setting up rules to handle it?

A. That is correct.

Q. The impossibility of an accounting system is your next observation, was it?

A. I don't recall just how I put it, I may have stated that.

Q. What did you mean by it?

A. I meant it would be necessary to open up another set of accounts with another trucking company instead of handling it ourselves.

Q. All that would be necessary would be opening up another interchange account?

A. Yes sir.

Q. And if you are going to keep the record of your truck operations separate from that of Rail operations, [fol. 792] wouldn't that be necessary anyway?

A. We were not figuring on doing that. That is the reason I mentioned that fact.

Q. You are not figuring on it?

A. No, sir.

Q. Didn't you testify that you kept your figures separate on the Monroe-Hamlet branch?

A. Only the cost of operating the truck not as to the revenue received.

Q. You kept the cost figure separate, but not your revenue figure?

A. Yes.

Q. But if the Commission required the keeping of your cost and revenue figures separate, there would be no distinction there, would there?

A. You mean if they required us to keep it?

Q. Yes.

A. I see. No, sir. I don't think there would, except we would handle all the records ourselves. That would be the only difference.

Q. You would have records of any interchange anyway, would you?

A. I don't know——

Q. You would have to keep that anyway, would you?

A. You mean if we made this same arrangement with [fol. 793] the truck company that we did with another railroad company?

Q. That's right.

A. That would be the same.

Q. The same accounting system?

A. Yes.

Q. Your next one was that your records were available to competitors. Aren't you competitive with certain rail carriers at certain points?

A. Yes, sir.

Q. And you interchange freight with those rail carriers, don't you?

A. Not movements to the same territory that we move to or the same station that we move to.

Q. But they do see your bills of lading?

A. They have to as it goes through.

Q. But not to strictly local traffic?

A. Not on local traffic.

Q. But whenever you interchange, your movement of freight is known to the man that you interchange with?

A. As to the freight that goes to his line, that's right.

Q. That goes to him?

A. Yes, sir.

Q. Do you think that the Seaboard Air Line Railroad is today making money on the less truck load freight moving on this Division?

[fol. 794] A. I'm not prepared to say, sir. I have not broken it down; I couldn't say.

Q. The purpose of this is to increase your revenue, isn't it, or to decrease your cost?

A. Well, the sole purpose that we had, sir, was to expedite the movement of the freight, that is so far as I am personally concerned. That is the end I'm working to.

Q. Do you think it would increase your cost or decrease your cost of operation?

A. I think it would decrease cost of operation.

Q. Then it would be a saving?

A. A slight saving, yes.

Q. Then handling of less carload merchandise freight by Motor Carriers is cheaper than handling it by rail carriers?

A. I'm not prepared to answer that, sir. I think it would be with us where we have our forces set up that could handle both the truck and the cars. I don't know what their cost of operation and overhead is. The operation at their various terminals, I don't know how that works.

Q. Then there are some other cost factors in the handling of less than truck load traffic other than those you had in that figure from Hamlet to Monroe?

A. I don't know that there are, sir. This was strictly the cost of handling a truck. We do not expect to increase or decrease our forces at the stations where we handle. We [fol. 795] figure we will handle with the same force that we have now.

Q. Some of these points you show on these routes are not agency stations, are they?

A. Some are not.

Q. Are you figuring on putting an agent there?

A. No, sir.

Q. How would you handle freight into there, coming in there at one and two and three a. m. in the morning?

A. Put it in the warehouse and lock it up just as we do with carloads.

Q. Is an agent at other points going to meet the truck at night?

A. No, sir.

Q. Do you give pick-up and delivery service by motor carrier at these points?

A. You mean at the agency stations?

Q. Yes, agency stations?

A. Let me see if I know what you mean by motor carriers. I don't know as I am clear on that.

Q. By truck.

A. Yes, sir. Some places do. I didn't know whether you meant licensed trucks or just what you meant.

Q. How many of them do you?

A. You mean at these intermediate stations?

Q. Yes.

[fol. 796] A. At Petersburg, Henderson. I think they are the only two places where a regular truck handles the business. At the other places they are handled by merchants or somebody with a wagon. The places are so small.

Mr. Abeles: My understanding of your question is not by whom it is handled, but whether it is handled at all.

By Mr. Watkins:

Q. Where do you give pick-up and delivery service?

A. Petersburg, Dinwiddie, McKinney, Alberta, Grandy, Skelton, LaCrosse, Bracey, Wise, Norlina, Ridgeway, Manson, and Greystone.

Q. Another objection that you raised to interchanging traffic with a motor carrier is that you would not have supervision over their deliveries?

A. Yes.

Q. Do you have supervision over the engineers of the railroads that you interchange with?

A. No, sir.

Q. Then when you interchange freight with a rail carrier you have no supervision over that or other carrier's employees today?

A. No, sir.

Q. So in that instance there would be no difference from interchanging with a railroad, is that correct?

A. Not if it was turned over to him as a common carrier [fol. 797] and our responsibility ceased, then it would not.

Q. If a common carrier, motor carrier, interchanged with you there would be no difference as far as this is concerned than from interchanging with railroads?

A. That is right, as far as I know.

Q. Do you have control of schedules of your railroads connections?

A. No, sir.

Q. Then your objection of having no control of schedules of the motor carrier would be no more than it now is in interchanging with the railroads?

A. Yes, sir. I think there would be some difference in that, if I'm qualified. Where we interchange with other railroads, we do not interchange with railroads who serve the same places that we are going to serve, and therefore——.

Q. I'm speaking now simply of the idea of control of schedule which you named as one of your objections and I asked you would you have any more control over your railroad connections than you would have over your motor carrier connections?

Mr. Abeles: I have not previously interrupted the counsel in this line of questioning. It seems to me obvious that Mr. Terrell's direct testimony was confined to the suggestion of the way we could interchange traffic over the territory involved in this application, with other existing motor carrier agencies.

[fol. 798] Mr. Watkins: The questions went far beyond that territory and I'm asking about supervision, records and other matters to which he has all ready referred, all over the system.

Mr. Abeles: For example, in his last question which related to the coordination of schedules, he asked whether or not he could control the schedules of our other train connections. Obviously not, but the only pertinent question is whether we can control the schedule of the proposed truck service we are using in coordination with train service in this territory.

The Chairman: So far it is going a little bit far.

Mr. Watkins: My position is this. Mr. Abeles, by his leading question attempted to leave the inference that it would be very much more difficult in interchanging with motor carriers than with interchanging with railroads. And I'm trying to show that the interchange is itself identically the same regardless whether with railroad or truck line.

The Chairman: Here is the general position, as I get it from his answer, gentlemen, that if the Coast Line Railroad had a line running to McKinney, South Hill, Norlina, that the Seaboard would not interchange freight at Richmond and turn over less carload freight to the company's line for the same points; that these truck operators serve the same points that the Coast Line, in the illustration, [fol. 799] might serve; and therefore it would not turn over, that the company would not be expected to deliver freight to the trucks for the same points that they themselves serve.

Mr. Watkins: I understand that is his position, but I'm trying to show that other than that there is no difference in the interchange between a motor carrier and the railroads. And I think that the witness has demonstrated that the only objection is competition and that the other objections are really not objections because he has those same difficulties when he is interchanging with other railroads.

The Chairman: I think that, Mr. Watkins, is a matter of argument. He testified on his direct examination about which you cross-examined, that competition was one element that is considered. When it comes to argument in the case, of course, it is your privilege to contend that is the controlling element.

Mr. Abeles: I don't want to prolong this discussion, but I want to make it clear that I understood Mr. Watkins' questions and I assume the witness did, to relate to parts of the system other than those covered by the proposed train operations. When he asked for an example of whether or not we would have the same difficulties in coordinating train schedules with other train connections, my objection was predicated on the fact that we would make no such interchange over routes to and from stations served by our [fol. 800] lines. And if he confines his questions to truck operations and if he confines his inquiries to the truck service performed between Richmond and Henderson, I concede the relevancy; but not between any other points on the Seaboard system.

The Chairman: I think the proper limitations of the examination is the coordination of service and other things affecting it between Henderson and Richmond.

By Mr. Watkins:

Q. Do you know what schedules are maintained by common carrier motor vehicles in this area?

A. No, sir.

Q. Do you know how many companies are operating in this area?

A. No, sir.

Q. Have you given any study to the motor carrier competition which you have?

Mr. Abeles: He said he didn't know anything about motor carrier transportation in this territory. I think that answers that.

Mr. Watkins: You think he said no?

Mr. Abeles: Yes.

By Mr. Watkins:

Q. When you made the statement you didn't think this operation of yours would interfere in anyway with the existing motor carriers, you made that without knowing the service of the motor carriers?

A. Yes, sir. I did not know the service that they have in there.

[fol. 801] Q. Now, if by any change there were motor carriers with service identically as your proposed schedules, would there be any more difficulty, other than the competition, of interchanging with them than with your own controlled truck lines?

Mr. Abeles: He has been into that, Mr. Watkins, considerably.

Mr. Watkins: I asked him other than his competitive situation.

Mr. Abeles: He has outlined five reasons why it would be utterly impracticable to employ other certificated motor carrier service for accomplishing that purpose that we have in mind. It seems to me that the question the counsel has just asked is simply requesting him to repeat those reasons. If the Board wants it, all right.

The Chairman: Let him answer that question and then we will see how much farther we go.

(The question is read.)

The Witness: Yes, there would be some difference, Mr. Watkins. We would have to arrange, if another carrier

handled this, to provide them with ways of getting into our stations at night, taking care of seeing that the freight was properly taken care of there as it was unloaded, etc.; otherwise, I would think there had been no difficulty.

By Mr. Watkins:

Q. If they were common carriers they would be under obligation to take care of the freight under the law?

[fol. 802] A. Yes, without furnishing the stations, etc., we would like to have some control of that.

Q. Would it be possible for you to furnish a statement showing the tonnage moved between the points on this route excluding Richmond and Henderson, such as shipments from Greystone to McKinney, or Greystone to Norlina?

(The question is read.)

Mr. Abeles: You mean moving exclusively between intermediate points between Richmond and Henderson?

The Witness: It could be gotten, Mr. Watkins. I don't know just how soon. We would have to go to our auditing department in Norfolk to get that information. Just how complicated it would be, I'm unable to say.

Mr. Watkins: I'm wondering if that won't be helpful to the Commission?

Mr. Abeles: I don't see how, Mr. Chairman.

The Chairman: His testimony, Mr. Watkins, is a pretty near approach to what the income from the intermediate stations would be. It is not exact, but it gives us a pretty good idea. After excluding Richmond and Henderson, then we have the amount of receipts, the amount received from goods from incoming and outgoing shipments from those points. About 60 per cent of it, he testified, was within the territory, moved within the territory. Let me clarify that. [fol. 803] If we can get it closer than that without an unreasonable amount of trouble and delay, why we would like to have it.

Mr. Watkins: As I understood his testimony, the 60 per cent included Henderson and Richmond.

The Chairman: I didn't so understand that.

Mr. Abeles: No.

The Chairman: I may be incorrect in my memory.

Mr. Abeles: My understanding was that it did not include Richmond and Henderson, but the witness can probably clear that up.

The Witness: I meant that it did not include Richmond and Henderson. I meant approximately 60 per cent of the freight moving into these intermediate stations moved to Richmond, Petersburg and Henderson. The other came from foreign lines and through Portsmouth and that way.

Mr. Abeles: But that 60 per cent does exclude any traffic which would not move by these trucks.

The Witness: Yes.

The Examiner: Your cost figure of $1025 per month, that includes purely operating cost of truck, not station cost, overhead, or allocation of other expenses incident to the handling of freight handled by truck?

The Witness: That is correct, sir. Just the operation of the truck.

The Chairman: All right, Mr. Watkins.

[fol. 804] Mr. Watkins: You don't think it would be advisable then to try to get those figures?

The Chairman: Not unless they can be reasonably gotten.

By Mr. Watkins:

Q. Where would you get them, Mr. Terrell?

A. From Norfolk. I doubt if we could get them by tomorrow night. I doubt if we will be able to get them.

The Chairman: If we could get them anything like as soon as that, I think we ought to have them.

The Witness: I stated to Mr. Watkins that I don't know just how long it would take to get them.

The Chairman: If you could *d*urnish the Board with them within the next week, that would be all right.

Mr. Abeles: Your Honor, to make it absolutely clear just what Mr. Watkins wants, I would like to have him restate what he is requesting.

Mr. Watkins: I'm requesting figures of tonnage and revenue moving between points on this line, other than Henderson and Richmond.

Mr. Abeles: Moving to these points?

Mr. Watkins: Between.

Mr. Abeles: If that information can be obtained, Mr. Chairman. Of course, we have no o*n*jection to doing so, but I can't see just what Mr. Watkins is after in requesting that information, because it seems to me that the only information which could in any sense be useful in connection with

[fol. 805] this proceeding would be the volume of movement which would move by trucks.

The Chairman: I don't think it presents a fair picture at all if you were to exclude the LCL movements originating in Richmond for this particular territory, or from Henderson to this particular territory.

Mr. Abeles: Exactly.

The Chairman: That would be moved by trucks if the franchise is granted. It ought to include every movement the truck would handle.

Mr. Abeles: That is precisely my point.

Mr. Watkins: I'm perfectly willing to include that.

The Chairman: If he gives us that information, I will be glad to have it.

(Discussion off the record.)

Mr. Abeles: I would like to have your question on the record.

The Examiner: Is the theory of your case so far, based upon this basis, that the benefits to accrue by reason of this new service involved in this application are principally a more expeditious handling of less carload freight between certain points, and an operating economy which accrues to the railroad system as a whole, rather than a theory or a basis of an independent profitable truck operation?

Mr. Abeles: Mr. Examiner, I can answer that question [fol. 806] in this way, Primarily the purpose we have in mind is to expedite the movement of the less carload shipments that will be handled by the proposed truck service. I shall have a witness expand upon that answer a little further.

With regard to the economy which might result from the establishment of this truck service, and replying to your inquiry as to whether or not we conceived of this proposal as profitable, and if it is independent, and if it is a coordination feature with the railroad service, and that is extremely difficult to answer. A reply to that question would involve a thorough statistical investigation of the revenue which would accrue to the system from the traffic which will be handled by these trucks, a figure which could be easily obtained, and which has already been made of record in this proceeding; and further an investigation from the way bills covering each individual shipment over a given period of time to determine its origin and destination; and secondly,

the proportion of the total mileage which the shipments move by rail and truck respectively. That would require, I feel sure without being an accountant, an extremely laborious and expensive inquiry, and I hesitate to state to the Examiner that we could furnish that. But in view of the primary purpose which we have in establishing this motor service, it seems to me that that inquiry is of only subordinate importance if it is material at all.

[fol. 807] The Examiner: My inquiry at this time was due to the fact that it seems that the hearing was headed in some such direction as that as to the question of the cost and profit on an independent basis.

Mr. Abeles: Only, may I remark, through the cross-examination of counsel for protestants; and I might say also, that, while of course we could not furnish any such statistics at this time, I shall investigate to determine whether or not it is practical and if I find that it is, without inordinate expenses and time, it will be furnished.

The Examiner: You may proceed.

By Mr. Watkins:

Q. Mr. Terrell, at this time, you have made no investigation to determine the economy that would be accrued to the Seaboard Air Line Railroad as a whole of this proposed service?

A. No, sir, I haven't.

Q. And at this time you have not made any study to determine whether or not the motor carrier service taken as a separate unit would be a profitable operation or not?

A. No, sir.

Q. This figures of 15.3¢ per mile, represents purely the road cost of operating a truck?

A. Yes. That is correct.

Q. Interest, insurance and all those come in; but it does not include the question of overhead, unloading, accounting, clerical billing, or any of those figures?

[fol. 808] A. No, sir.

Q. I believe you stated that you did not expect any additional traffic to accrue to the Seaboard Railroad as a result of the inauguration of this new service?

(The question is read.)

A. I don't recall saying that, Mr. Watkins. I may have. What I meant was as far as I was concerned, we were in-

augurating this service simply to get truck service started and expedite delivery of the freight we were now handling.

Q. Do you expect any additional traffic?

A. I'm not in position to say personally. I don't think we will get, in this particular territory, additional traffic, to amount to anything.

Q. Your personal view is you will not get any additional traffic?

A. Yes.

Q. Even though you are creating a better service?

A. Yes, but——

Q. You don't think the question of service has anything to do with increasing tonnage?

Mr. Abeles: Let him finish the answer.

The Witness: I meant at least, Mr. Watkins, to clarify myself, that so far as I'm individually concerned we were putting on this simply to take care of the business we have now, making an earlier delivery of freight by freight trains [fol. 809] over a suggested line there, if it was possible to do it. Of course, we expect to have some small amount, in stopping the freight trains for this purpose.

By Mr. Watkins:

Q. You are speaking in this case for the Seaboard Air Line Railroad, are you?

A. Yes.

Q. Is it your idea that a better service will attract more tonnage or not?

A. Well, yes, sir. The better service you give, why naturally you would be in better position to handle the traffic, yes, sir.

Q. So by the giving of better service in this instance you assume it will attract some traffic?

A. As I said before I did not expect it to in this particular territory.

Q. Then is it your theory that in this particular territory, a faster service wouldn't mean any additional traffic?

A. In this particular territory, I don't know that it would, sir. No.

Q. Then the public is not demanding any faster service in this particular territory, are they?

A. I qualified the statement to start with. Yes, sir.

There would be some requests for early delivery of the freight that we are handling.

Q. If there is a demand for a faster service that demand must be based upon additional traffic, wouldn't it?

A. Well, as I stated before, I don't know that it is. What [fol. 810] we started out to do was hold what we had and there has been some requests that we get it to them earlier.

Q. But you don't think this inaugurating faster service by this method would attract any additional tonnage?

A. As I stated before in this particular territory, I doubt if it will, sir.

Q. Well, suppose by the use of this service you speeded up the movement of traffic from Raleigh to these points? Do you think it would have any effect there?

A. No, sir. I do not.

Q. Suppose by the use of Motor Carrier service that you here propose and the use of a motor carrier service between Raleigh and Henderson, you speeded up the traffic, would that traffic move by motor carrier all the way or partly by rail and partly by motor carrier?

A. That's right. The only thing that would move entirely by the truck would be some freight moving from one of these intermediate stations between Raleigh and Henderson, to intermediate stations between Henderson and Richmond. That naturally would be on a truck from Henderson.

Q. But you would not move any freight from Raleigh to Henderson by one truck and from Henderson to Richmond by another?

A. No, sir.

Q. Would you be willing for your certificates to be so limited as to prevent that?

[fol. 811] Mr. Abeles: Now, just a moment. We have repeatedly stated our objections in other proceeding to that question, and of course we object to it here. We are considering first of all the isolated proposal here before the Commission. As counsel for the applicants in this case, I will answer the inquiry by saying "No." If you phrase your question "would we have any objections?" my answer, of course, is emphatically yes.

The Examiner: I think that answers your question.

Mr. Watkins: I got it answered. I have just got to get it answered some eight times before the week is out.

By Mr. Watkins:

Q. Then under the application—by the way are you familiar with the application that you have filed for service between Raleigh and Henderson?

Mr. Abeles: I object to that. He is again going beyond the scope of this case.

(The question is read.)

Mr. Watkins: I think you should consider that Mr. Terrell has testified that there was a possibility of a shipment moving from a point between Richmond and Henderson to a point between Henderson and Richmond all by motor carrier. I meant to say between Raleigh and Henderson, and between Henderson and Richmond.

The Chairman: Yes, since it was stated this morning that each one of these applications was urged and asked for the independent of any other application that might be [fol. 812] pending or that might hereafter be made for motor truck franchises, this Board is of the opinion that only the movements within the territory covered by this application should be considered. If we should go beyond that, it would open wide the case for testimony as to part motor movement and part rail movement from one end of the country to the other, and the only practical way of handling this matter as we see it is to limit it to the movement on the route described in the application.

Mr. Watkins: May I urge in connection with that, that on direct testimony, this applicant has shown movements from other points than are covered by this, partly by rail and partly by motor carrier. Now, it seems that in order to get a complete picture we should also see wherein there was a possibility of moving from other points not involved in this particular application, all by motor carriers, as we have already seen the possibility of movement by joint rail and truck service.

The Chairman: In doing that, you would tend to create a greater necessity rather than diminish it, wouldn't you?

Mr. Watkins: I suppose so, but at the same time we would also show to this Board the full extent to which these proposed segments of a truck operation would go when put together; and you would get a much clearer picture of the

effect on competition by motor carrier than you would by limiting it to this simple inquiry.

The Chairman: As I understand the application by the [fol. 813] Seaboard, there are segments by motor all the way from Richmond to Columbia?

Mr. Watkins: And south of there.

The Chairman: If we would admit others, we would have to consider all. We have not the privilege of doing that because we have only one application before us for one segment. Therefore, we will have to rule out the testimony which tends to show the effect of shipments originating on another proposed segment which has not been passed upon, on the route in question in this application.

Mr. Watkins: I will have to note an exception.

The Chairman: To that ruling the protestant takes an exception.

(Discussion off the record.)

The Chairman: All right, gentlemen, we will proceed.

By Mr. Watkins:

Q. It is the proposal here to handle freight that originates at Raleigh and other points south in the north boung truck moving from Henderson to Richmond?

A. Yes, sir. Wait a minute and let me see if I am right. Did you say to handle freight from Henderson to Richmond?

Q. Yes.

A. Not to Richmond, no, sir.

Q. It would be your purpose to handle freight that originates at Camden, Monroe, Charlotte, Sumter, Hartsville, and Hamlet, in your northbound truck moving between [fol. 814] Henderson and points between Henderson and Richmond?

Mr. Abeles: You mean moving by rail from those points to Henderson?

Mr. Watkins: I'm not suggesting how it moved to that point.

Mr. Abeles: If the question is directed to movement by truck from the points named by counsel, to the points on the Richmond-Henderson line, I have the same objection. If his question is confined to the movement of shipments by rail from the points south of Henderson to Henderson

thence by truck to the intermediate territory here involved, I have no objection.

Mr. Watkins: My question did not specify either one.

Mr. Abeles: Then I would object.

The Chairman: Under our ruling you would have to confine it to partial rail and partial truck movements.

Mr. Abeles: Unless the question is made specific, I object to it.

Mr. Watkins: He can qualify his answer.

The Chairman: I want the question to be specific and direct as to whether you mean connecting motor movements or made partly by rail and partly by motor; otherwise, we would be admitting testimony which has been excluded.

Mr. Watkins: In view of the Commissioner's ruling, I will say by rail out of those origin points, and from Henderson north by truck.

[fol. 815] The Chairman: All right.

By Mr. Watkins:

Q. To points served by the trucks?

A. Yes, sir.

Mr. Watkins: However, I want to take exception to the ruling.

The Chairman: All right, sir, exception allowed.

Mr. Watkins: Would it be your purpose to handle freight originating at points between Henderson and Richmond by motor truck destined to points south of Henderson by rail?

The Witness: I didn't follow. Will you read the question.

By Mr. Watkins:

Q. Would it be your purpose to handle shipments originating between Henderson and Richmond by truck, and destined to points south of Henderson on your lines?

Mr. Abeles: Now, again, I want that question clarified, and limited.

The Chairman: On your rail line?

Mr. Watkins: On your rail line.

Mr. Abeles: If I understand the question——

The Chairman: The construction might be placed upon that Mr. Abeles, that he has no other line from Henderson south except his rail line at this time. Now, we are discussing the franchise from Richmond to Henderson. Then

if he has asked the question, if he proposed to remove any [fol. 816] part of this which he brings from Richmond to intermediate points to Henderson by motor on part of his line, the only other part of his line he has is rail line.

Mr. Abeles: If his question asks whether we propose to carry traffic moved by truck from points between Richmond and Henderson and thence beyond by rail. I have no objections.

The Chairman: Over your present facilities. Is that what you confine it to, Mr. Watkins?

Mr. Watkins: Yes, sir.

By Mr. Watkins:

Q. Will you please describe how LCL shipments would move from Petersburg, Virginia, to Wadesboro, North Carolina?

A. The shipments from Petersburg to Wadesboro at the present time insofar as I know them, would be loaded in a car to break bulk at Hamlet, North Carolina.

Q. How would it move from Hamlet to Wadesboro?

Mr. Abeles: Wadesboro, you mean?

Mr. Watkins: Yes.

Mr. Abeles: I think he has already answered that question. If the design is to show any movement by truck again beyond Hamlet, I again object.

The Chairman: I would be against you on that because you already have that line.

Mr. Abeles: I beg your pardon. I overlooked that fact.

The Chairman: That is an existing facility.

[fol. 817] The Witness: My answer is that I'm not familiar with the service south of Hamlet. I don't know how it is handled.

By Mr. Watkins:

Q. Didn't you testify this morning that there was a truck service operated by you between Hamlet and Monroe?

A. I said the superintendent there had given me some cost figures on a truck operated there.

Q. Then there must be some truck service there?

A. Yes, but I'm not familiar with the operation of freight south of Hamlet. I don't know anything about it. It is not on my Division, and I don't know.

Q. Do you know how a shipment moves from Petersburg to Rockingham?

A. Other than what I gave you before, no, sir.

Q. Do you know your train schedules between Hamlet and Monroe?

A. No, sir.

Q. Mr. Terrell, I believe you testified that freight to these intermediate points between Richmond and Henderson, excluding them, largely originated at Henderson and Richmond?

A. Richmond and Petersburg.

Q. Richmond and Petersburg?

A. Yes.

Q. And do you intend to handle freight originating at Richmond and destined to Petersburg on this truck?

[fol. 818] A. No, sir.

Q. Do you not intend to handle freight originating at Petersburg and destined to McKinney on this truck?

A. Originating at Petersburg destined to McKinney?

Q. Yes, sir.

A. Yes, sir.

Q. You do?

A. Yes.

Mr. Abeles: LCL shipments?

By Mr. Watkins:

Q. LCL shipments and LCL shipments to Bracey, La-Crosse, or Skelton?

A. Yes, sir.

Q. And also freight originating at these points in Virginia, destined to Richmond?

A. Yes, sir.

Q. Also freight originating or destined to Norlina, Wise, Ridgeway, and Manson, and origin or destination at Henderson?

A. Yes, sir.

Q. Have you got any intrastate rights for that service either in Virginia or North Carolina?

A. You mean state rights, is that what you mean?

Q. Yes.

A. No, sir. So far as we know, we have not.

Q. So far as you know, you have no intrastate rights in Virginia or North Carolina?

A. No, sir. Not so far as I know.

[fol. 819] Q. Then so far as this exhibit is concerned it shows tonnage that without a certificate from North Carolina and Virginia, you could not handle on this line?

(The question is read.)

Mr. Abeles: In the absence of it showing how much of this traffic is interstate and intrastate, of course the witness can't answer that question.

Mr. Watkins: It is obvious that this exhibit contains some intrastate, isn't it?

Mr. Abeles: I presume so.

Mr. Watkins: I'm asking the witness. Let him testify instead of you.

Mr. Abeles: All right.

The Witness: What is the question now, I'm sorry?

(The question is read again.)

The Witness: That is my understanding, we could not unless we receive the certificates.

By Mr. Watkins:

Q. Can you estimate the amount of intrastate tonnage that is shown on this exhibit?

A. No, sir, it would be purely a guess if I did.

Q. You have got no way of doing that?

A. Not here, no, sir.

Q. But you do know some intrastate tonnage is shown on the exhibit?

A. Yes, sir. I am quite sure of it, yes, sir.

[fol. 820] Q. Isn't quite a large part of it, because don't most of these towns purchase in Richmond and Petersburg?

A. Yes, sir, down as far as Norlina, yes, sir.

Q. Then don't these North Carolina points usually purchase at Henderson?

A. Yes.

Q. And the intrastate tonnage in here is for considerable volume?

A. I would say so, yes.

Mr. Watkins: I think that is all.

The Chairman: Anything further? We have about 10 minutes more.

Mr. Abeles: I might state for the record that we have pending before the Commission, applications for certificates over the North Carolina portion of this route.

The Witness: In discussing the question of additional transfers which would be involved by the utilization of independent truck lines, there would be additional interchanges involved by the use of independent truck lines.

Redirect examination.

By Mr. Abeles:

Q. Is there a difference between an interchange and a transfer as regards delays and cost of performing the operation, that is interchange with another transportation agency, as compared with a transfer with our own transportation agencies, see what I mean?

[fol. 821] A. Yes, sir.

Mr. Watkins: May I state here that that question should be limited to interchange with motor carrier facilities.

Mr. Abeles: I'm entirely willing. I intended to *limit* it to that.

The Witness: My answer was yes, there was a difference.

By Mr. Abeles:

Q. And what is that difference, if you can answer that briefly?

A. The difference in the transfer to our own truck is that it would be handled by our forces and would be loaded into the truck without any additional records or anything of that kind; where an interchange was involved it would be necessary for each line to check the freight and make records of the way bills and other documents accompanying the shipments as well as the accounting feature with which I'm not entirely familiar with the set up.

Q. With regard to the supervision of employees which would be employed, in utilizing other truck transportation agencies in performing this proposed truck service, Mr. Watkins asked you whether it was any more difficult to supervise employees of independent truck lines than it was

to supervise the employees of other rail transportation agencies. Do we know or do you know the manner of supervising the discharge of the duties of other rail transportation agencies, as compared with our own methods?

[fol. 822] A. The methods are practically standard or practically similar all over the United States, that is on standard Railroads.

Q. Do you know anything about the methods of supervising the discharging of duties by other motor carrier agencies?

A. No, sir.

Q. Now, you stated, Mr. Terrell, that in inaugurating this service you did not have in mind any additional business that might result from the improvement in service which you contemplated, did you not?

A. Yes, sir.

Q. Mr. Watkins asked you whether your cost of conducting truck service included station expenses, traffic expenses and other costs generally characterized as traffic expense and overhead cost. Will there be any additional costs of that nature other than those out-of-pocket costs, directly incurred in operation of this truck, which will result from the establishment of this service?

A. No, sir.

Q. Will we use the same station forces?

A. Yes, that is our intention.

Q. The same records will be kept?

A. Yes, sir.

Q. The same accounting and other operations as though the transportation were by rail?

A. Yes, sir.

[fol. 823] Mr. Abeles: That is all, Mr. Chairman.

Recross examination.

By Mr. Watkins:

Q. You stated you didn't intend to keep any separate accounting record?

A. Of the freight handled by this truck.

Q. If the Interstate Commerce Commission required separate accounting records for motor carrier transportation that would be an additional cost?

A. That would be according to how voluminous the report was. We could take on some. A great deal of work, naturally it would be. Yes, sir.

Q. Have you made any investigation to determined the method of supervision of employees now in effect by common carrier, motor carriers?

A. No, sir.

Q. You don't know anything about the rules of the Commission dealing with that subject or the proposed rules?

A. Only what I have read.

Q. You don't know whether or not the supervision over the employees of a motor carrier in the same as the supervision over rail carriers?

A. No, sir. I don't.

Q. I believe you stated that one of your economies if it could be handled by interchange with your own trucks rather than another motor carrier truck, would be that [fol. 824] the handling of the freight would be by your own force and they would put it in your own truck?

A. Yes, sir.

Q. It would be by the carrier's force if it was put in the truck?

A. Well, I didn't think I stated that because I don't know just what arrangement we would make. I don't know whether we would handle the freight or whether it could handle the freight, and who would load it.

Q. It would be possible to have the same?

A. So far as actual handling of the freight.

Q. If you made such an agreement with the motor carrier?

A. Yes, sir.

Mr. Watkins: That is all.

(Witness excused.)

The Chairman: All right, we will take a recess until two-thirty.

(Whereupon at 12:50 p. m. the hearing adjourned until 2:30 p. m.)

[fol. 825] Afternoon Session

Raleigh, N. C.; June 14, 1937, 2:30 o'clock p. m.

The Chairman: We will come to order, please.

C. D. JONES was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Jones, state your name, residence and occupation.
A. C. D. Jones, LaCrosse, Virginia, merchant.
Q. Mr. Jones, what is your business?
A. General merchandise.
Q. In LaCrosse?
A. Yes, sir.
Q. Will you state what benefit the service which is proposed by the Seaboard in this proceeding, you would receive?
A. Well, we feel like it would help us a lot there because we would get our freight early in the morning, around five o'clock, I think.
Q. Do you now receive less carload shipments by rail?
A. Yes, sir.
Q. And what time do those shipments generally arrive?
A. From 11 to 2 o'clock during the day.
Q. And you will now receive those shipments if the proposed service is authorized at what time?
[fol. 826] A. Around five in the morning.
Q. Is that of importance to you and your customers?
A. Yes, it is.
Q. Why?
A. Lots of time we order things for people and they want them right at once. Getting them this way, of course, we have them in time to use them during the whole day. As it is we can only get them and use them half a day.
Q. Now, for example what are some of the products that you deal in?
A. Of course, this is over with now. One thing we have had was tobacco plants. We have had a great demand for that.
Q. Planters?

A. Planters. Lots of time we have to order machinery, repairs for that machinery, flue casing, cultivators and cultivator steel.

Q. And is it important for your customers to receive shipments of that character as early in the day as possible?

A. Yes, it is.

Mr. Abeles: That is all.

The Chairman: The witness is with you, gentlemen.

Cross-examination.

By Mr. Watkins:

Q. Where do these agricultural implements originate?

A. Mostly at Richmond.

[fol. 827] Q. They come from Richmond?

A. Yes.

Q. Practically, all the movement that you are interested in is between Richmond and LaCrosse?

A. Yes, sir.

Q. You don't buy from other points generally?

A. Well, the most of them what we buy come from Richmond.

Mr. Watkins: That is all.

(Witness excused.)

J. P. Hayes was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Please state your name, residence, and occupation?

A. J. P. Hayes, McKinney, Virginia, with the State Highway Department.

Q. Have you any other business activities?

A. I am connected with the button factory.

Q. At McKinney?

A. Yes. The North American Button Manufacturing Company.

Q. Will you state your position with regard to this application, Mr. Hayes?

A. Well, the way I see it we have right much trouble there in getting those buttons after we manufacture them, shipped

away. They are always delayed by not having the proper [fol. 828] service there.

Q. Are you familiar with the schedule proposed for this truck line?

A. Yes.

Q. That schedule expedites your shipments?

A. I think it would be a great advantage because we are having trouble now getting them out and have to just get them up as far as Petersburg or anyway we can to get them early in the morning.

Q. How do you now get your shipments out?

A. Ship them by a milk truck that leaves the dairy there and goes into Petersburg every day. We ship by truck to Petersburg.

Q. And reship by rail from Petersburg?

A. Yes.

Q. Your shipments are entirely less car load, are they?

A. All outgoing products are less car load.

Q. By use of this truck service your difficulties will be largely removed?

A. Yes.

Mr. Abeles: That is all.

Cross-examination.

By Mr. Watkins:

Q. What is the ultimate destination of these buttons?

A. They are all shipped north of Richmond. North of Richmond, nothing goes south at all.

[fol. 829] Q. This milk truck that handles them to Petersburg are they qualified with the Virginia Commission?

A. Now, you are asking me something I don't know.

Q. You made no investigation of that?

A. No, sir.

Q. Did you ever use truck service out of this point?

A. No, sir.

Q. Do you know whether or not there is any?

A. I don't think there are any trucks that make any deliveries there at all.

Q. Do you know of any that pick up there?

A. No, sir.

Q. Do you ever see Horton Motor Lines through there?

A. I see them through every day, but they don't stop in McKinny.

Q. Have you ever inquired to see whether they would stop?

A. No, sir.

Q. If Horton Motor Lines could pick up at McKinny and deliver at points north of Richmond faster than you can haul it from McKinny to Petersburg on a Milk truck and north there by railroad, which service would you prefer?

A. Well, I would prefer the fastest one.

Q. But you haven't made any inquiry to find out which was the fastest?

A. No, sir.

The Examiner: Do your shipments go beyond the limit of [fol. 830] the state of Virginia?

The Witness: Yes, everything goes beyond the state line.

The Examiner: What principal place?

The Witness: New York and Philadelphia.

(Witness excused.)

W. L. STANLY was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Stanly, please state your name, residence, and occupation?

A. W. L. Stanly, residence Atlanta, Georgia, vice-President of the Seaboard Air Line Railway Company and chief Public Relations officer of the receivers.

Q. Mr. Stanly, have you been closely associated with the development of Auxiliary Truck Transportation Service by the Seaboard?

A. I have.

Q. Will you state the general plan and purpose followed by the railway in that development?

A. In our study of the possibility of the use of highway trucks in connections with the operations of our railroad, we proceeded upon the theory that by land there are three distinct forms of transportation. One, all rail, one all truck, and the third a combination of rail and highway service. In our studies of these matters we have endeavored to [fol. 831] develop this coordination service which I men-

tioned last. We have taken various territories of our railroad and made studies of the possibilities of the use of trucks in those particular territories, in conjunction with our train service. We find that by the partial use of rail service and the partial use of highway service that our main objective can be complemented, that is, expediting the movement of freight which the public sees fit to give to us. Of course, we must handle everything that is offered to us whether it is remunerative or whether we do so at a loss. Now, the principal objection is the expedition of this freight. I should have said the principal objective if the expediting of the movement of this freight. Generally speaking and not referring particularly to this application here, we find that by hauling freight from the principal shipping centers to some convenient central distributing point, by rail, and there delivering it to the truck and that we can expedite materially the movement, as compared to the present movement of that freight solely by rail. There are other things that we accomplish by this, generally speaking. The first is expediting the movement of carload freight to the extent that we relieve our local freight trains of the so-called service, the handling of less than carload shipments at various stations, and the necessity of making stops at those stations, the movement of those trains is speeded up and carload business is handled more expeditiously. Then [fol. 832] in certain instances we have found that by the rearrangements of the schedule of our local freight trains, that instead of operating them in the day time, we can operate them at night, and switch industries at times that will be less inconvenient to the operators of those industries. Generally speaking those are the objectives which we are seeking to obtain.

Q. Those purposes that you have just enumerated are generally speaking applicable, are they, to the proposal here under consideration?

A. In some general particulars. In some they are, because I do not understand that we here propose to operate the local freight train at night. It may be possible that that can be done later on.

Q. In establishing the truck service to which you have referred, is there any purpose or intent on the part of the railway to supplant with them the existing rail service performed by the railway?

A. Absolutely, no. It is unquestionably true that where you have the volume of business to justify the operation of trains that there is no transportation by land, that is as cheap as that by railroad. And for that reason, if for no other, we would not seriously consider the substitution of truck for train service where the volume of business is sufficient to justify the operation of trains.

Q. Now, is it the purpose of the receivers to transport carload shipments by these truck operations?

[fol. 833] A. No, for the simple reason that we could not do it as cheaply as we can do it by rail.

Q. Mr. Stanly, does the Seaboard operate truck service in other states and localities?

A. It does.

Q. Will you describe as fully as possible where those truck services are located and extend?

A. Taking them as near as I recall them in chronological order, we have a service between Hamlet, North Carolina and Monroe, North Carolina, which was established some four or five years ago. On January 1, 1935, we put on two services in Florida, one from Morristown, Florida to Waldo, Florida; and the other from Tampa to Brooksville, Florida. Then we followed or perhaps this may have preceded the two that I have mentioned, the service between Grifton, Florida and Monticello, Florida, a distance of four miles paralleling a branch line railroad that we have between those two points. We then put on a service between Jacksonville, Florida and Wildwood, Florida. We subsequently extended that from Wildwood to Tampa. That, by the way, is the longest operation we have anywhere, being 212 miles long. Then we have one from Fernandino, Florida, to Yulee, Florida, a distance of 12 miles and paralleling another branch line railroad. Another between Rhine and Lyon, Georgia, a distance of, as I recall it, of 58 miles. The [fol. 834] total mileage involved in all those operations is 450 miles.

Q. So the Seaboard has had experience since the inauguration of the Hamlet-Monroe service, in I believe you said 1931?

A. It has been on some four or five years. I don't remember exactly the date, but we have had experience since the inauguration of that service.

Q. Are all the operations which you have mentioned still in service?

A. Yes.

Q. Has the Seaboard ever discontinued the service of any auxiliary truck operations once instituted?

A. Not of this particular character. At one time, we had during the period when we were operating a very limited number of passenger trains, a truck that operated from Norlina to Hamlet, North Carolina, principally for the handling of United States mail.

Q. But so far as concerns truck service carrying general commodities have we ever discontinued the service?

A. We have not.

Q. From your experience and the intimate knowledge of the operations which you have enumerated, in your opinion have they fulfilled the function for which they were established?

A. Undoubtedly.

Q. That purpose being a speedier handling of LCL freight?

A. Yes, sir.

[fol. 835] Q. Now, you said at the outset of your testimony, Mr. Stanly, that one of the primary purposes that the Seaboard has in mind in establishing these auxiliary truck services is to expedite local deliveries and by relieving through trains of the local delivery service, increasing the efficiency of the carload movements, if it is practicable. I'm now referring to the question raised this morning, as to the possibility of determining whether or not these auxiliary truck operations would be financially successful as independent projects, have we any way of determining the exact result from a financial standpoint of these operations?

A. No. It is almost impossible to do it for two reasons. First, in the main, this traffic will be largely handled partially by rail and partially by truck. I might illustrate that by saying that at Richmond, Virginia, in this particular case, we not only handle from that point business that comes to us from Richmond proper, but from connecting lines, the Chesapeake & Ohio, the Richmond-Fredericksburg & Potomac Railroad and the far west on the one side, and from the east on the other. We handle some freight from Florida points, to Petersburg, Virginia; and that, in order to show the delay that is incident to the handling of that LCL freight, moves to Richmond where it is transferred in a car and brought back to Petersburg. If this truck were in

operation, we would take that particular freight, which it would still go to Richmond, we would bring it back to Petersburg by truck and greatly expedite the movement. [fol. 836] In view of all those conditions it is almost impossible to segregate the truck operation from the rail operation and show the benefits financially that would incur from that particular service. After all, as we view it, the truck that we propose to operate is just a part of the railroad. It is another train so to speak, with limited capacity on the highway.

Q. Mr. Stanly, have you information from which you can tell the Board the result of the operations of the Seaboard Air Line System in the year of 1936?

A. I have before me a copy of our annual report for that year.

Q. Will you refer to the income account page three of that report, and state the gross revenues, gross Railway operating revenues, net railway operating income and the gross income from the system in 1936?

A. The gross operating revenues were $38,346,055.37. The net railway operating income was $2,920,582.99. And the gross income arrived at by adding to the net railway operating income, other income, was $3,276,751.23, which was available for the payment of interest on indebtedness.

Q. It there any question from that statement that you have just made of the financial ability of the railway to establish this truck service here under consideration?

A. Absolutely not. We have had not trouble in meeting our operating expenses and taxes. Our difficulty has been [fol. 837] in meeting on our bonded indebtedness.

Q. Are the expenditures authorized from time to time far exceeding that which will be involved in the establishment of the truck service?

A. Oh yes.

Q. Now from your experience with other truck operations conducted by the railway, Mr. Stanly, what have you to say regarding the effect of the highway service rendered by the railway, limited in the manner you have described, upon independent motor carriers operating in the same territory?

A. I have made a study of this situation, in the state of Florida. And I might say here very frankly, that we hope that we may be able to get back some of the business that

truck lines either, certified carriers or private carriers have taken away from us. In Florida, for the years, 1930, to 1935, by the reports of the railroad commission of that state, the earnings of the common carrier truck lines operating in Florida, increased in that five year period 75 per cent, while the earnings of the railroads on strictly Florida business, freight earnings, decreased 33 per cent. Now, answering specifically your question as to the effect that this will have upon competing forms of transportation, I might say that this competition has had very serious effect on us as compared to the time when we once enjoyed a monopoly on transportation. As I stated in answer to another question, [fol. 838] we inaugurated between Morristown, Florida, and Waldo, Florida, and between Tampa and Brooksfield, Florida, on January 1, 1935, two trucks lines. The reports of the Florida Railroad Commission show that the earnings of our three competitors in each of those territories common carrier truck lines, increased both in 1935 and 1936.

Q. You conclude from that, I suppose, that there has been no prejudicial effect upon these independent truck lines from the establishment of our own service?

A. There are a good many reasons for that. The figures which I gave you demonstrated in that particular instance that they have not. But two of the reasons that I might mention are these. Generally, speaking, truck rates are lower than rail rates. We are asking for the authority in this petition to change rail rates to the extent that they may be lower or our competitor will still have advantage over us, another reason is that the competing truck lines can take short cuts so far as distance is concerned. And I will illustrate that by referring, it doesn't apply to this particular application; but it is illustrative of what I have in mind, take the Seaboard operating between Raleigh, North Carolina, and Wilmington, North Carolina. We have got to go through Hamlet. We have got to take the long route, two sides of the triangle while the competing truck line operates cross country from Raleigh to Wilmington. They would still have that advantage of us wherever the direct route is [fol. 839] in favor of the truck line.

Q. Do we in any instance digress from our rail route where there is a highway paralleling those routes?

A. Our policy has been to use the highway nearest to our railroad and which is generally used by the public in going from one community to another served by our railroad.

Q. And in instance where we traverse communities or towns which are not served by the railroad what is our practice?

A. Well, we will not attempt to do any business there. We only expect to do business where we have authority as a railroad to do business.

Q. Do we operate through such communities and towns with closed doors?

A. Absolutely. We won't stop at a country store and do business on the highway country store that was between two of our stations. It is only at those points where our rail tariffs authorize us to do business.

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: Any questions, gentlemen?

Cross-examination.

By Mr. Watkins:

Q. Mr. Stanly, you have been speaking of the general policy of the Seaboard Railroad, is it not the general policy of the Seaboard to parallel practically all of their rail lines with truck service?

A. No, sir. It is not. We are only taking, Mr. Watkins, particular sections of the railroad where we thing by this [fol. 840] coordinated service we can expedite the movement of LCL freight and each case represents a study in and of itself.

Q. Is it not true that you have prepared and filed with the ICC, eight applications for truck service paralleling your rail lines?

Mr. Abeles: I object for the same reasons.

The Chairman: The objection is sustained. That part of it alone is not objectionable.

By Mr. Watkins:

Q. This is a little different situation now. Mr. Stanly, chief Public Relations Officer of this railroad has testified to the policy of this railroad. I think as long as he testified to that policy it is perfectly correct for me to be allowed, for me to go into and test how far that policy has been carried out.

Mr. Abeles: Only insofar as it applies to this particular operation which is before the Board in this proceeding.

Mr. Watkins: In his direct testimony, he referred generally to truck service at other points on his route. He referred specifically to movements between Raleigh and Wilmington.

The Witness: Not by truck.

The Chairman: He did not testify to any proposed truck service or as to his application for such service between Hamlet and Wilmington. I think we had better confine ourselves, gentlemen, to this case. You can ask him if he proposes any more. That is a matter of record, further than [fol. 841] that I think we should not go.

Mr. Watkins: That is why I asked if he had eight applications on file.

The Chairman: I will admit that. Objection overruled, and exceptions.

Mr. Able: I won't even except to that.

Mr. Watkins: Will you answer that question?

The Witness: We have on file with the ICC now, seven or eight additional applications.

By Mr. Watkins:

Q. And generally covering what area?

Mr. Abeles: There is the limit, I think.

The Chairman: Objection sustained.

Mr. Watkins: May I have an exception to that?

The Chairman: Exception.

By Mr. Watkins:

Q. Did you not advocate the passage of a law in the state of Georgia, which if passed, would have allowed railroads to have inaugurated service paralleling their lines without the issue of convenience and necessity being passed on?

M. Abeles: I object to that.

The Chairman: Objection, sustained, exception.

Mr. Abeles: I am objecting to *ti*, not because I have the slightest objection to Mr. Stanly's furnishing that information, but I can't see any possible relevancy to it.

The Chairman: That can't aid us in deciding this case. [fol. 842] Mr. Watkins: I think it will aid in finding out the general policy of this railroad.

The Chairman: I think, gentlemen, the only question before us is whether or not there is public convenience and necessity shown for the granting of this franchise.

Mr. Watkins: Mr. Commissioner, I didn't open this question of general policy.

The Chairman: And fitness, willingness, and ability to perform the duties required of the franchise operator if the franchise is given.

By Mr. Watkins:

Q. You now have a truck service between Hamlet and Monroe?

A. Yes, sir.

Q. What is the schedule movement of that?

A. I think, I'm not positive as to these figures, Mr. Watkins, that leaves Hamlet early in the morning probably around 6:45, a. m., gets to Monroe around 9:40 a. m., leaves Monroe at 10:30 a. m., and arives at Hamlet at about 2:00 o'clock. I don't think those figures are exactly correct, but they are approximately so.

Q. How many trucks do you operate on that run?

A. I don't think——

Mr. Abeles: I didn't object, Mr. Chairman, to the first question because I wanted to find out if possible just what he has in mind, but there is obviously no connection between [fol. 843] the Hamlet and Monroe operation and the proposal here under consideration which terminates at Henderson.

The Chairman: It seems to me there might be some remote pertinency. I'll let him answer that.

The Witness: If there is more than one, I do not know it.

By Mr. Watkins:

Q. Has there be- any change in the service on that line since the inaugurating?

A. I can't answer that. Do you mean in the last four or five years?

Q. Yes.

A. I don't know. I just can't answer that.

Q. I believe you signed personally these applications that were filed with the ICC?

A. Yes, sir.

Q. And I believe that these applications are "Extensions of present service"?

A. I don't know what language you refer to.

Mr. Abeles: Are you speaking now of the present application?

Mr. Watkins: Of the present applications, yes, sir, extensions of operations. Then I refer you to your application Docket MC 86,687 and ask you why it was that you did not refer to that as an extension, but refer to that as a new operation?

Mr. Abeles: Same objections, Mr. Chairman.

[fol. 844] The Chairman: In what operation?

Mr. Watkins: MC 86,687.

The Chairman: Is that the one before us?

Mr. Abeles: No, sir.

The Chairman: Objection sustained.

Mr. Watkins: The line of questioning here has an entirely different point of view now. The purpose of it is this: He testified that it is the extension of rail service. Now, he treated another application in this series differently, and I want the record to show why he treats them differently.

The Chairman: Now, Mr. Watkins, don't you think we ought to take that up when we get to that application and not confust it with this one? This application states an extension of rail service, and this is the one we are hearing. Now if that is objectionalbe in the other case, that is the time that objection should be heard and considered.

Mr. Watkins: What I'm after is trying to find out why. My position is this, Mr. Commissioner, I believe that the reason this was done is because this application, through other pending applications, does tie up with his present operations between Monroe and Hamlet; and I believe that is the purpose of this and t-eating it this way, because all of those were considered as extensions of that operation between Monroe and Hamlet. The reason for the treat-

[fol. 845] ment of the one in South Carolina was referred to differently was because it didn't physically tie up with the rest of these applications but missed it by six miles.

The Chairman: That gets back to the main question involved in your motion this morning to show the purpose of the applicant in having all these segments, form one continuous service through the state. We don't see any

reason why we should desert the ruling that we gave this morning on your motion.

Mr. Watknis: I want exceptions noted.

The Chairman: Yes, sir, exceptions.

(Discussion off record).

The Examiner: On the record. Mr. Stanly, none of these operations which you have just testified in regard to having signed the applications therefore have yet been begun, have they?

The Witness: Not a single one of them.

The Examiner: It is not your intention to start one any sooner than another.

The Witness: Not a particle. I think the record will indicate that the word extension there was not used in respect to these services of the application that I have just looked at. If that did appear it would have reference to extension or auxiliary service or railroad service.

(Discussion off record).

Mr. Abeles: I notice that the Commission's formal noti- [fol. 846] fication setting this application for hearing does characterize it as an extension of operations. But by reference to the application itself, it will be noted that it is designated as a request for authority to institute an operation at a time subsequent to October 15, 1935, and the application did not either consider or designate this application as an extension of operation. I think that clarifies the record.

Mr. Watkins: Now, I want to say for the record, that the form upon which the application was filed is the same as was used for extension of operation not as used for the beginning of a new operation. So the applicant must have said something in its application for the commission to determine some of these applications were extensions while one of them was a new operation.

Mr. Abeles: So if the Commission did so, it was without the knowledge of the applicant and without concurrence in that application.

By Mr. Watkins:

Q. Mr. Stanley, I believe you testified that on this particular operation you were not going to discontinue your freight rail service or change it any way?

A. So far as we now know.

Q. So far as you now know. And you are going to handle carload traffic by your rail service?

A. Yes.

Q. So it will be necessary to stop at these points to set [fol. 847] off carload traffic?

A. Oh, no. Many of these points will be no carload traffic.

Q. To which?

A. On these smaller stations. I have a list of them here.

Mr. Abeles: I think Mr. Terrell identified those this morning.

The Witness: I wouldn't undertake to say. There never has been any carload traffic to any one of these points. You take Grandy, Skelton, Bracey, and Wise, Ridgeway, Manson and Greystone. I doubt if there would be a carload of business there, once a year, if then, that is moving into these places. And to those points there has hardly been a carload of LCL business in 11 months. The sad part of it is if only one little package, weighing five pounds, comes, we have got to stop the train there to put it off.

By Mr. Watkins:

Q. Isn't there a rock quarry at Greystone?

A. Yes, sir.

Q. They move carloads of rock out of there?

A. Yes, we move stone out of there.

Q. I believe you stated or testified that it was not in contemplation the handling of business from and to points on this route, from and to points on other routes that you have asked for the privilege of operating, entirely by motor truck?

A. It would be the exception to the rule.

Q. Are you willing to have your certificate limited as to [fol. 848] prevent that?

A. I am not.

Q. Would you be willing to have your certificate limited so that it would require that this traffic move at least partly by rail?

A. I would not. Because if we handle for instance a shipment from Ridgeway to Manson, a distance of just a few miles, there would be no earthly way to handle that partly by train and partly by truck to start with. And in

the second place, if we did do it we have to have a back-haul on it to bring about any such result.

Q. As between this application and other applications pending, would you be willing to say that your application be limited so as not to allow you to interchange from one branch to another motor carrier branch?

Mr. Abeles: I object as the matter is now involving proceedings not before this Board.

Mr. Watkins: I'm trying to find out what his intention is with connection with this operation, in connection with other operations as applied for.

The Chairman: Operations involved in other applications?

Mr. Watkins: Yes, sir.

The Chairman: I believe I will let him say whether or not he could do that.

Mr. Abeles: Mr. Chairman, I defer, of course, to your ruling. It seems to me we are again becoming involved in [fol. 849] operations which are not before the Board in this proceeding at all.

The Chairman: Not any operations, he may have some others in some sections. That was a general section. I think he can answer it.

The Witness: I certainly would object. I illustrate the ground for my objection by using the following imaginary situation. Suppose that we had a certificate authorizing us to operate from Hamlet to Raleigh. One authorizing us to operate from Raleigh to Henderson, and that we got a shipment at Cary going to Wake Forest, and it moved into Raleigh by truck. I certainly would want the privilege of handling that shipment from Raleigh to Wake Forest by truck.

By Mr. Watkins:

Q. And you would want that privilege because it would be the most economical way of handling the traffic?

A. No, that fits into the general scheme of coordinating rail and truck service. I might say that in my opinion, a very large percentage of the business that will be handled upon this particular route will be moved partly by rail and part-y by truck. You take the business that comes from Portsmouth, Virginia, from the boat lines that would move down to Henderson by truck to these various points.

Taking the business that comes into us from connecting lines at Richmond, that would be handled by rail up to that [fol. 850] point. And then if it came south of Henderson, it would be handled by train to Henderson. Take the business that comes from all over the United States, use a railroad term that breaks bulk at Hamlet, North Carolina, it would be loaded from Hamlet to Henderson and moved by rail that way then the truck would take it and distribute it, the major part of this business is going to be business that would move partly by rail and partly by truck. There will be isolated cases where from station to station you have a package that will move exclusively by truck.

Q. Then if it is more economical to the railroad to move it all by truck rather than partly by truck and partly by train, it would be your intention to use the all truck service?

A. It is not more economical to move it all by truck. Answering that, I assume that it is not more economical to move it all by truck; except in those isolated cases we would never substitute truck for train service to handle an appreciable amount of business.

Q. Where it does become more economical to use truck service between any points where you might have the right, you intend to do so?

A. If we have rearranged our train schedules between Hamlet and Raleigh as to have a truck in there, and rearranged them north of Raleigh as to have a truck in there, we certainly wouldn't want to use both a train and a truck to stop at Cary, to pick up a shipment for Wake Forest.

Q. If by the use of all truck service you could save 24 [fol. 851] hours or more over the time elapsed by all rail or joint rail and truck service, which service would you use?

A. Well, there would be another factor that would enter into that. That would be the question of the rail service that you had. But I repeat the answer I made to you awhile ago that in my opinion, there is nothing worth while either in the public interest or from the standpoint of the railroad, to substitute truck entirely for rail service. And we have no intention of doing it.

Q. Except in certain instances?

A. Except in instances where we can expedite the movement of freight; and largely in those cases where the volume is exceedingly small.

Q. I believe you stated it would be impossible to ever determine whether a motor carrier operation of a rail line was profitable?

A. I said it would be very difficult to segregate under the schemes of coordinating service, the earnings and expenses of both of those services. That is what I said would require a great deal of labor and the use of some arbritary figures.

Q. Do you ever attempt to figure the earning capacity of any branch of your railroad?

A. What?

Q. Any branch of your railroad, any division or branch?

A. Oh, in a very general way.

Q. Well, take your Chesterfield-Lancaster operation, that is a subsidiary line. Can you figure whether or not that [fol. 852] operation is profitable or not?

A. Yes. Because there we keep separate accounts for that subsidiary line as though it were an independent railroad.

Q. Would it not be possible to keep similar accounts for this motor truck operation as you do for the Chesterfield-Lancaster operation?

A. I don't think so.

Q. Why?

A. Because we are going to handle it partly by rail and partly by truck.

Q. You handle shipments from Raleigh to Pageland, partly by the Seaboard system and the Chesterfield-Lancaster road, have you not?

A. That is just the same as if we had shipments going from Raleigh, North Carolina, to New York. Each railroad keeps records of its particular earnings.

Q. The through rate is prorated?

A. The through rate is prorated.

Q. A mileage?

A. I don't know on some basis.

Q. Would it not be possible to prorate the rates on this traffic as to the part of the traffic that moves by truck and as to the part of the haul moving by rail?

A. I don't say it wouldn't be impossible. I say it would not be practicable. It would be a very difficult thing to do. [fol. 853] Q. Would it be any more difficult than doing it on the Chesterfield-Lancaster operation?

A. Absolutely.

Q. How?

A. Because that is a separately operated railroad. The truck we are going to operate is a part of the facilities of the Seaboard Air Line Railway just as a box car and engine of that railway is part of the facilities.

Q. Under this proposed system you still intend to handle the package car by rail service to Richmond and Petersburg?

A. I think so. I'm not positive as to that; wherever we have a sufficient volume of freight to handle it by rail, we are going to do that.

Q. Even though it takes longer?

A. Well, even if it takes slightly longer, in that particular case.

Q. 24 hours?

A. No, we won't do it then. We won't take 24 hours.

Q. By how many million dollars did the Seaboard Air Line fail to pay their fixed charges in 1935?

A. Mr. Abeles: One moment before you answer that question. I have no objection to his stating, but it is in the exhibit which is filed and I don't think it would expedite this proceeding.

The Examiner: By the way you didn't offer that.

[fol. 854] Mr. Abeles: I beg your pardon.

The Chairman: He can answer that.

The Witness: In 1936, the Seaboard lacked $6,097,461.95 of having sufficient money, after the payment of its operating expenses and taxes, to meet the interest on its bonded indebtedness, exclusively of the interest on adjustment mortgage bonds.

By Mr. Watkins:

Q. What is the relationship of your gross operating revenue and your net operating revenue?

A. You mean the ratio?

Q. Yes.

(Discussion off record.)

The Witness: The operating ratio of the Seaboard in 1936, was 82.98. In other words we had about 18¢ left out of every dollar after paying operating expenses and taxes to meet interest on bonded indebtedness.

Mr. Abeles: Might I object at that point and explain it for the record. That is not what Mr. Watkins asked. That operating ratio figure does not represent the ratio between gross operating revenues and net operating revenues, I don't think. It represents the relationship between gross operating revenues and operating expenses. I simply wanted to clarify that for the record.

[fol. 855] The Witness: The figure I gave you is to be found on page 27 of the annual report for 1936.

By Mr. Watkins:

Q. Now, let's go down to Florida where it is cooler. This increase in business that you found out from the reports to the Florida commission, that included all the business of those carriers, did it not?

A. That is right.

Q. And the figure that you have compared from the Seaboard railroad included only the strictly Florida business?

A. Yes.

Q. The truck figure included interstate traffic as well as intrastate traffic?

A. I might explain it this way, Mr. Watkins. You take truck line A that operates in Florida and also in Georgia, its earnings for its entire line were shown; but you would also find that if you compared those earnings to the earnings of all of the railroads operating in Florida, that there had been a substantial decrease in the system earnings of those railroads during the same period.

Q. But the comparison doesn't show the effect on the motor carrier business directly affected by your motor carrier operations?

A. In other words, I could make no comparison of their earnings in the territory through which we had an operation. I could only take their total earnings and compare [fol. 856] them with our total earnings.

Q. Now, today you have an operation by truck all the way from Jacksonville to Tampa?

A. Yes.

Q. And you don't know the effect of that on the operating revenues of the motor carriers operating from Tampa to Jacksonville?

A. That has only been in operation less than a year. There are no figures available.

Q. And five out of the six operations that you testified to in Florida, were begun January 1, 1935, or later?

A. Perhaps that is true. I have not counted them up.

Mr. Abeles: At this point, I should like to offer in evidence the annual report of the Seaboard Air Line Railway and its receivers for the fiscal year ending December 31, 1936.

The Chairman: Mr. Abeles, the Examiner called my attention to the fact that your first exhibit wasn't received in evidence. We will receive both exhibits No. 1 and No. 2 in evidence at this time.

(Exhibit No. 1 and No. 2, Witness Stanley, received in evidence.)

By Mr. Watkins:

Q. Mr. Stanly, with regard to the purposes, which you described generally that the railroad has in mind in establishing these truck services, have you anything else to say?

[fol. 857] A. I'm stating my personal opinion, now, whatever it may be worth. The railroads today are in competition not merely with the certified common carrier truck lines, operating between fixed termini and over definite routes, but they are already in competition with the contract carrier, the for hire vehicle, and trucks operated by merchants. It is my opinion that as a result of this expedited less than car load freight service which we are seeking authority to establish, that some merchants if not many of them, will discontinue, the use of their private trucks in territories that are served by the trucks from the railroads.

Redirect examination.

By Mr. Abeles:

Q. From that source do we hope through the establishment of these auxiliary services to regain traffic which we could not now carry?

A. Yes.

Q. Will that affect the certificated truck operators in any way?

A. No.

Q. Do they carry any of that traffic now?

A. Of course, they do not carry the traffic handled by the merchant in his own truck and by the contract carriers?

Q. Now, Mr. Stanly, Mr. Watkins questioned you at some length with regard to the purpose which we might have had in mind in establishing independent through truck service. Can you state from your own knowledge as to whether the several truck operations for which the applications you [fol. 858] refer to are now pending before the ICC, were scheduled in such a way as to articulate within themselves as to make it a practical proposition to operate them as through service in conjunction with each other?

A. No such objective was in mind as I stated in the beginning of my testimony. Each territory was taken and studied independent of every other territory. And I might state that if we had a truck service from Columbia to Richmond, several truck services in that territory, that we would be, for want of better words, I would say assinine to operate a truck from Columbia to Richmond to handle that business when we have got a car moving from Columbia to Richmond every day by rail.

Q. That would be a wasteful procedure?

A. Yes, sir. We would be fit subjects for the lunatic asylum.

Q. Mr. Watkins asked whether we were willing to limit our applications to service rendered partly by rail and partly by highway. So far as these several applications for service are concerned, in that connection, I want to ask you this. If we found that in the exceptional circumstances to which you refer that by transporting a less car load shipment from one section to another, we could save a considerable lot of time in the delivery to the consignee. Would we be criticized if we did not take advantage of that benefit to the shipper?

A. I don't know whether we would be criticized or not, but in the public interest having in mind the speeding up of freight, I think that we could be justly criticized. And I [fol. 859] tried to state in my testimony awhile ago that those would be exceptional cases and not the rule.

Q. Now, Mr. Watkins seemed to have some difficulty in understanding why we do determine the net results of operations of a subsidiary line such as the Chesterfield-Lancaster, and could not determine the net operating results of a coordinated truck service such as we propose here. In

order to clarify the record, let me ask you this. When a shipment is made from a point on the Chesterfield-Lancaster to a point on the Seaboard, is there a definite revenue division or rate division between those two lines?

A. Yes, there is.

Q. Is that made by an agreement or by order of the regulatory authority?

A. I'm not sure about that, Mr. Abeles, but my opinion is that it is made by the regulatory authority.

Q. Let me interrupt. I didn't mean to ask you which one it was made, but simply whether those divisions were fixed either by agreement or by regulation?

A. Absolutely.

Q. Is that the reason then why the revenue accruing to the Chesterfield and Lancaster can be readily computed?

A. You can readily determine through that apportionment of gross earnings the revenue between the Seaboard and the Chesterfield-Lancaster. Of course, the Chesterfield-Lancaster have its own expenses that are separate just as the expenses of the Seaboard Air Line Railway are [fol. 860] kept separate.

In other words as I understand you the two properties are operated complete and separately distinct from each other in the accounting and auditing department?

A. Absolutely.

Q. As regards this coordinated truck service the revenues are emerged and not ear-marked with respect to the respective forms of service?

A. The earnings of the truck line are for all accounting purposes the earnings of the railroad, and there is no record kep- separately of these earnings.

Q. I think you stated that it would be an extremely laborious task to make that separation?

A. It would not only be a laborious task, but a very expensive one and as I see it an unnecessary one.

Mr. Abeles: That is all, Mr. Chairman.

The Witness: I might add this if I may, under conditions as they exist at this time, we will set up a certain operation by rail and a certain operation by truck. It is easily conceivable to me that in the course of time conditions might change. That instead of hauling freight from Richmond, for instance to Henderson, that we might have a car that we set out at some intermediate point and that the

truck would take it from and distribute it to the smaller stations. All of those things depend upon conditions as they may exist from month to month and from time to [fol. 861] time.

Mr. Abeles: That is all, Mr. Chairman.

Recross examination.

By Mr. Watkins:

Q. And if conditions justified it in the future you might want to change these schedules you now propose?

A. Well, we would have to come to the Commission for that authority. We couldn't do it without asking for that authority.

Q. If conditions changed, you might handle more and more freight by all truck service rather than by coordinated?

A. I hope we will handle quite a bit more freight by coordinated truck service.

Q. By substituting truck service——

Mr. Abeles: I object to that substituted truck service. That is foreign to what we hope to do.

Mr. Watkins: I have never been able to see the difference between coordinated service and substituted service.

The Witness: In coordinated service, the major part of your service has to be handled partly by rail and partly by truck. Substituted service is where we discontinue the train, as I see it and put a truck on. We have no idea of doing that.

By Mr. Watkins:

Q. If you handle any freight entirely by truck as far as that truck is concerned it would be substituted service, would it not?

A. Depends on your revenues.

[fol. 862] Mr. Chairman: It might be an additional service. Is there any further testimony?

Mr. Watkins: Mr. Stanly, opened up a nice subject of testimony here a few minutes age when he testified that in these various applications there was no authority of coordination. Now, your operation from Henderson to Rich-

mond propose to leave at 8:00 o'clock a. m., in the morning, do you not?

The Witness: Yes, sir.

By Mr. Watkins:

Q. You leave Richmond at 12:01 a. m.?

A. Leave Henderson for Richmond at 7:00 in the morning.

Q. And you propose a truck service from Raleigh to Henderson arriving in Henderson at 5:00 a. m. in the morning?

Mr. Abeles: Just a moment, same objections there, Mr. Chairman. I might explain that my questions with regard to the purpose in establishing through service, were directed at the Hamlet-Monroe operation, which Mr. Watkins injected into his cross-examination.

The Chairman: One thing about it your witness sort of opened the door there as to whether or not the services were cordinated. He said the services were not coordinated.

Mr. Abeles: Simply for the purpose of refuting any implication which might arise from the question which was asked by Mr. Watkins, which you permitted him to ask as to whether or not there were pending before the Interstate Commerce commission, 7 applications.

[fol. 863] The Chairman: Yes, sir.

Mr. Abeles: As to operating details of those operations you excluded all questioning. That was the sole purpose of my questioning Mr. Stanly with regard to the possibility of establishing through service.

Mr. Watkins: On direct examination Mr. Stanly testified that there was no intention in connection with all eight of these applications to coordinate the service of them. Now I think I should be allowed to show the possibility of coordination from the face of the application.

Mr. Abeles: The face of which applications.

Mr. Watkins: All of them.

Mr. Abeles: I object to that.

The Chairman: I'll let you show whether the schedules in this application are coordinated with the schedules at Henderson in the other application if it so shows.

Mr. Abeles: The Henderson-Raleigh application?

The Chairman: Yes. No further than that. I think that would be going far enough.

Mr. Abele: All right. I have no objections.

Mr. Watkins: That was what this particular question was directed towards in this case.

The Chairman: All right.

By Mr. Watkins:

Q. Are you not proposing a service leaving Raleigh, North Carolina, at 1:30 a. m., and arriving in Henderson [fol. 864] at 5:00 a. m.?

A. That is correct, in another application.

Q. And proposing a service here leaving Henderson at 7:00 a. m. and arriving at Richmond at 4:00 p. m.?

A. That is correct.

Q. Thus a shipment could leave Raleigh at 1:30 a. m. and arrive in Richmond at 4:00 p. m.?

A. Yes, sir.

Q. By using truck service? That would be physically possible?

A. Yes, sir.

Q. Now, how does that time compare with your present rail service between Raleigh and Richmond?

A. I haven't the schedule of our train from Raleigh to Richmond, but——

(Mr. Terrell hands him one.) (Refers to time table handed him by the counsel.)

The Witness: Under our Rail service we would leave Raleigh on train No. 8 at 9:20 a. m., arrive at Richmond at 5:00 o'clock a. m.

By Mr. Watkins:

Q. Take Wake Forest to Richmond?

A. The train leaves Wake Forest at 8:25 a. m., arrives at Henderson at 1:50 p. m., on Tuesdays, Thursdays and Saturdays. In any event it would be loaded into a car at Henderson and moved in the train that night to Richmond. On the alternate days it would move from Wake Forest [fol. 865] to Raleigh and be moved in a train leaving here at 9:25.

Q. Then your service by truck from Wake Forest to Richmond would be very much shorter in time element than it is by rail today if it moved all by truck?

A. It would be slightly shorter, yes.

Q. And the purpose of these applications is to expedite the movement of LCL traffic?

A. To expedite the movement of LCL traffic, but I repeat emphatically with no intention of coordinating the schedules between these separate regions. You might if you would take the return movement between Richmond and Henderson. It leaves Richmond at 12:01 a. m., arrives at Henderson at 8:00 o'clock a. m. which the truck for Raleigh would leave Henderson at six o'clock a. m. two hours before the truck from Richmond arrived. It is possible you might take these figures in some instances and show it might be possible to have continuous truck movement. I still repeat that it was not our objective when we sought to have authority to obtain authority in establishing these services.

(Discussion off record.)

Mr. Watkins: I understand the Chairman has ruled, I can not go into other illustrations tying up other of these schedules.

The Chairman: They are too remote from this one unless we were considering them all together. You have shown there is a connection one part of the day and not in another. [fol. 866] Mr. Abeles: In one direction and not in another?

The Chairman: Northbound direction, but not the southbound.

Mr. Watkins: I want to note an exception to that ruling.

The Chairman: All right.

Mr. Watkins: I presume, Mr. Stanly, by this program of coordinated truck and rail service and you refer to, you desire to attract additional tonnage to the rail carriers?

The Witness: We hope very much that our improved service will result in our getting more business.

By Mr. Watkins:

Q. And that additional business will be diverted from some other transportation service?

A. We will just be getting back that which was taken away from us.

Q. Which is now being handled by other transportation agencies?

A. Well, by many transportation agencies, not necessarily by certified carriers. As a matter of fact it is my personal opinion that a great deal more business is moving by private trucks and contract carriers than by the certified carriers. That is just my personal opinion.

Q. Let's get down to this particular operation. How many of the industries along your line there have their private trucking services?

A. I couldn't give you the number. If you go to any wholesale center of importance, you will find that quite a few of the merchants are operating their own trucks. I [fol. 867] couldn't give you the number from Richmond-Petersburg, from Henderson, I just know that generally speaking that is true. Specially, I have that information as to Atlanta, Mr. Watkins.

Q. We are talking about Richmond and Raleigh now?

A. I say I couldn't give you specifically how many merchants and trucks.

Q. Mr. C. D. Jones, a merchant, testified here in behalf of the Seaboard, did he not?

A. Yes.

Q. He testified he purchased his commodities from Richmond and that they moved in rail service?

A. Yes.

Q. So that is one merchant on this branch who has not got trucks?

A. He is not a wholesaler; he is a retailer at LaCrosse. The man using two trucks to deliver to him is a wholesaler somewhere.

Q. Can you name any person or merchant on any of these points which you speak of who gets the traffic by this movement?

A. No, I couldn't mention the name of a single merchant because I have not sought to develop that information. From my general knowledge, those trucks are in general use in all central wholesale shipping points.

Q. But if 98 per cent of the traffic, LCL traffic, moving between these points involved in this application is moving by certified motor carriers you would expect to divert [fol. 868] some of it to your line?

A. We hope we would be able to get some of that business which I said awhile ago we had lost to them.

Q. Then you disagree with Mr. Terrell?

A. I certainly do. I think though in justice to Mr. Terrell I should say that it is my understanding that when Mr. Terrell worked out these schedules he did it as an operating man rather than a traffic man.

(Discussion off record.)

Mr. Watkins: That is all.

The Examiner: As a matter of sound operating policy, if on this line, offered by this application, the demands of traffic should be sufficient to justify or require the operation of, say six trucks in each direction, on six schedules, it would be sound operating policy, if you were authorized to operate them to use that many, would it?

The Witness: Yes, sir.

The Examiner: Then the matters of schedules or the frequency of service are matters which are subject to change dependent upon the amount of this particular kind of traffic you propose to handle by truck, is that true?

The Witness: Subject to changing conditions. I might say this, if I may be permitted. Of course, the Railroad could put on a train and run it every hour with two or three cars which would be a prohibitive operation so far as expense is concerned, because we do not have a sufficient [fol. 869] amount of business, volume of business to justify the operation of those trains. Now, in view of that we are seeking this coordinated service.

Mr. Abeles: In connection with Mr. Watkins' development of the fact that the schedule between Raleigh and Richmond permitted a through truck service beginning at Raleigh or leaving Raleigh at 1:30 a. m. and arriving at Richmond at 4:00 p. m., in the afternoon, you pointed out that our local train, our through train, No. 88, left Raleigh at 9:20 p. m. and arrived at Richmond at 5:00 a. m.; with those two schedules before you, would we ship a less carload shipment consigned from Raleigh to Richmond by the truck or the train?

The Witness: It would unquestionably go by the train regardless of the truck service as I tried to point out in the beginning. We have a car from Raleigh to Richmond every day. We are going to move this business between those two points, Raleigh and Richmond. Mr. Watkins asked me about Wake Forest, a small station between here

and Henderson and I stated to him what would possibly occur under those conditions.

Mr. Abeles: But where we have train service between two different or given points, and no inherent advantage would result from the use of the truck in preference to the train, do I understand you to say that we will continue to use the train service?

The Witness: I tried to make that very clear, that we [fol. 870] expected to use train service where we could accomplish the same purposes as by the use of truck services.

Mr. Abeles: Even though the truck schedules would permit strictly the same service by highway as we perform by train.

Mr. Watkins: Do I understand your applications are limited to these schedules alone?

The Witness: You mean our truck?

Mr. Watkins: Yes, sir.

The Witness: Yes.

Mr. Watkins: And that you don't contemplate changing these schedules without going back to the Commission?

The Witness: I don't think we would have a right to do it under the law. That is my understanding.

Mr. Watkins: That is your understanding and your application is filed with that understanding?

The Witness: I think we have a right to put on additional trucks and we can change our train schedules.

Mr. Watkins: You don't think you could change your truck schedules?

The Witness: My understanding of the statute is we have to get authority to put on additional schedules. That we may run as many trucks as we see fit on a strict schedule, but that we can't put on different schedules without the authority of the Commission. That is my understanding of the law. I may be wrong.

[fol. 871] Mr. Watkins: You couldn't have seven trucks all leaving a given point at the same time, could you?

The Chairman: The same schedule time, you mean?

The Witness: They all couldn't be on the same spot at the same moment. There could be a schedule out of the depot the same time and run one after the other.

(Discussion off record).

The Witness: They are all on the same schedule but they all couldn't leave on the same track at the same time.

Mr. Abeles: That is all.

Mr. Watkins: That is all.

(Witness excused).

The Chairman: Have you any other testimony, Mr. Abeles?

Mr. Abeles: Mr. Chairman, we have closed.

The Chairman: All right, Mr. Watkins, if you have one witness now you think you can get through in about half an hour?

Mr. Watkins: I have two witnesses I'm very anxious to get through this afternoon. Mr. Koonce.

R. S. Koonce was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Mr. Koonce, with what company are you connected?

A. The Motor Transit Company.

Q. What type of operator is that?

[fol. 872] A. Common carrier type operator.

Q. By Motor Carrier?

A. That's right.

Q. What territory do you operate in?

A. We operate in Piedmont, North Carolina and as far north as Richmond. And Piedmont, North Carolina, I mean the central part of North Carolina over U. S. No. 1, from Richmond south through Raleigh, and branch off of Henderson to Oxford, branching off at Henderson, through Durham, Greensboro, Winston-Salem, Asheboro, Sanford, and Fayetteville, and intermediate points of course. They are the principal ones.

Q. Do you go into Charlotte?

A. We do not go into Charlotte.

The Examiner: Is Raleigh your southern termini?

The Witness: Fayetteville. We operate Fayetteville, which is more or less southeast from here.

By Mr. Watkins:

Q. What is the southernmost point on the U. S. highway that you use?

A. Sanford.

Q. Have you got intrastate rights over those routes?

A. Yes, sir.

Q. And have you applied—when did you gain this operation?

A. I might state in answer to that that we do not have intrastate rights in Virginia. We have interstate right.

Q. And when did you begin this operation?

[fol. 873] A. 1931, that is to Richmond. We started in North Carolina in 1927, the intrastate franchises, but our operation to Richmond from Raleigh started in 1931.

Q. And have you filed application with the ICC to cover these rights?

A. Yes.

Q. Has there been any action on your application as yet?

A. No.

Q. Now, you testified that you operate between Raleigh and Richmond?

A. Yes.

Q. And that you operate between Henderson and Richmond, do you not?

A. Yes.

Q. Over what road?

A. Over U. S. No. 1.

Q. Did you serve all points, intermediate, between Henderson and Richmond?

A. Yes.

Q. What type of service do you have in that territory?

A. We have an average of five trucks per day north of Henderson arranging in leaving time from Henderson from 6:30 to 1:00, 6:30 a.m., until 1:00 p.m. And other return service our first truck is scheduled to leave Richmond about 2:30.

Q. Two-thirty a.m.?

A. Two-thirty p.m.

[fol. 874] A. And four other trucks leaving Richmond from five to eight in the evening.

Q. And all of those trucks could handle business to all these intermediate points?

A. Yes.

The Chairman: They could not on your return trip?

The Witness: The return trip at night.

The Chairman; You can not handle any business from Richmond to any points in Virginia?

The Witness: We are not permitted to handle shipments in Virginia from Richmond anyway. We can handle interstate points like Wise, North Carolina, and Petersburg, by early morning truck out of Henderson. That makes local deliveries beyond Wise, up to Petersburg. And we have local delivery service in Petersburg.

The Chairman: But you cannot take anything on beyond Wise, from there to Richmond?

The Witness: Not at night.

The Chairman: I mean any time, going to Richmond.

The Witness: We are not permitted to, unless it is beyond the State line of Virginia.

By Mr. Watkins:

Q. Are there other truck services in that same territory?

A. Yes.

Q. Will you name some of them?

A. There is Horton Motor Lines, Barnwell Brothers, [fol. 875] Poole Transportation Company, Interstate Transfer, Atlantic States Motor Line, Colonial Motor Lines——

Mr. Abeles: May I interrupt one moment? Do all of these lines run on the Raleigh-Richmond route?

The Witness: All of them come into U. S. 1, some of them come through Raleigh. All come into U. S. 1 at Henderson, anyway.

Mr. Abeles: Then U. S. Highway No. 1 through Petersburg to Richmond?

The Witness: That is right. I am not familiar with those who come to Raleigh and go through Henderson, either hit Henderson going by Raleigh, or coming through Durham, going into Henderson.

By Mr. Watkins:

Q. Are there any others that you can think of?

A. The R-C Motor Lines, and I believe I mentioned the United Motor *Motor* Express. There are others, but they just happen *do* be those that I recall offhand.

Q. Have you ever seen any demand for additional motor carrier service over this route?

A. No.

Q. Do you think it is amply served at the present time?

A. I should think very amply.

Q. Do you compete with most of these operators whom you name?

[fol. 876] A. Yes.

Q. Do you have any competition from private truck operations?

A. Yes.

Q. What, in your opinion, is the basis for the institution of private truck services?

A. I think it is due to the fact that they can make their own deliveries by their own trucks at the existing rates and feel that they are being remunerated for the service.

Q. Does the element of service have any bearing on private truck competition?

A. You mean insofar as concerns the common carriers and the private trucks?

Q. Yes.

A. I do not think so.

Q. Is all of the service that any merchant might want at the present in this area?

A. I think so.

Q. And then the basis for private trucks in this area would be rates rather than service?

A. I think originally, up until three or four years ago, until transportation got fully developed, that one of the primary reasons was service. Now since there is ample service, I feel that regardless of what additional service is [fol. 877] put on, it will not turn much of the private owners' commodities back to any form of transportation, unless rates are put down to such a point that they would find it cheaper to ship by existing forms of transportation than in operating their own trucks.

The Chairman: You think the rates are too high?

The Witness: I think the wholesalers think they are too high.

Mr. Watkins: I believe that is all.

Cross-examination:

By Mr. Abeles:

Q. Mr. Koonce, in your opinion can a wholesaler operate his own trucks cheaper than you can?

A. I didn't say that.

Q. I said in your opinion?

A. No, I don't think so.

Q. Well, I understood you to say that the traffic now carried in the wholesalers' privately owned trucks would not be diverted to any other form of transportation, is that what you said?

A. Unless there was a reduction in rates to such points they felt — would be cheaper to ship by existing forms of transportation rather than by their own trucks. In making that statement, to qualify it, I might say that we run a merchandise warehouse here and are probably the largest [fol. 878] distributor of merchandise in Raleigh. That has been our experience over a number of years.

Mr. Abeles: I didn't get the last part of that answer.

(The answer is read by the reporter).

By Mr. Abeles:

Q. Are you referring now to large concerns like Proctor and Gamble who assemble their shipments in warehouses?

A. I was speaking mainly of what you might call the grocery line, such as wholesalers, jobbers and canned goods, soaps and things of that kind.

Q. Do you handle those shipments from those warehouses for these concerns?

A. We used to handle quite a few.

Q. But you don't now?

A. Very little.

Q. What I am trying to get at, Mr. Koonce, is why these wholesalers can operate their own trucks cheaper than you who are engaged in highway transportation as a business?

A. Well, I didn't say that. But usually when the whole-

saler sends his truck out he has a full load for a certain route. And I believe it is the opinion of most wholesalers, as to whether it is based on actual facts of cost I am unable to say, but it is the opinion of most wholesalers that at the present rates they are able to do that service at a profit.

[fol. 879] Q. You mean cheaper than you could do it for them?

A. Cheaper than any form of transportation could. When I say cheaper, I mean from the standpoint that they think they make a profit on the transportation.

Q. Do you know whether or not they add the cost of transportation to the price they get for their product?

A. In a number of cases I know it to be a fact.

Q. To be the fact?

A. Yes.

Q. Wouldn't it be advantageous to those concerns to use your service if you could prove to them that you could do it cheaper than they could perform it themselves?

A. I think it would.

Q. Have you never been able to satisfy them that you could do that?

A. I am not that good a salesman.

Q. Now, Mr. Koonce, you stated that you started operations in North Carolina in 1927, I believe.

A. Yes.

Q. What was the start of service?

A. Our first motor operation was between Raleigh and Greensboro.

Q. And when did you start your Raleigh-Henderson, Petersburg and Richmond service?

A. If I recall correctly, either the fall or spring of 1931.

[fol. 880] Q. In 1931?

A. Yes.

Q. The railway was in existence and operating at that time, was it not?

A. Yes.

Q. As I understand your position in this proceeding, it is that you are protesting against the service for which authority is here sought on the ground that there is ample transportation service already in exestence between the points covered, is that correct?

A. That is one reason.

Q. Now, confining our discussion to that reason, when you started that service between Raleigh and Richmond, did

you ascertain whether or not there was sufficient rail transportation service between those points?

A. Well, as a matter of general knowledge, I felt that I knew.

Q. What do you know?

A. And the application was heard before both Utilities Commissions of Virginia and North Carolina who determined it upon the convenience and necessity of the public.

Q. Did you make an effort to ascertain whether you could have employed rail service either in whole or in part to deliver shipments carried by you between points intermediate between Raleigh and Richmond?

A. We knew it to be a fact.

[fol. 881] Q. No, you didn't get my question. (Question is read). Did you make any investigation to determine whether or not you could use rail service in connection with your highway service for the delivery of shipments carried part of the way by you and by truck?

A. Naturally, I didn't because I knew there had been no precedents set in this territory where there had been any coordinated service between rail carriers and independent motor carriers.

Q. Yet, you are protesting that the railway in inaugurating this truck service should not do so because they should first come to you and ask you to supply the service for them? Is that your position?

A. Well, I say that the railroads had the opportunity offered of a great number of years in which the public was demanding a better service to inaugurate the same thing that they are now attempting to inaugurate. After the motor lines complied with the various state laws and had demonstrated to the public that they were in position to give the type of service the public demanded, I do not feel right now that the railroads should come in and invade the territories that have been set up and the rights of the Motor Carriers.

Q. I don't want to argue with you. At the time you inaugurated your service you had no compunction about invading the railroads' territory because you felt you were giving a superior service?

[fol. 882] A. I knew I was giving a superior service.

Q. Yet you are objecting now to the railroad invading what you deem your territory? by what they consider a superior service. Is that your statement and position?

A. What?

Q. Read that question. (Question is read).

A. We had something better to offer, and I don't think the railroads have.

Q. You don't think the railroad, sticking to this application in this route involved in this proceeding, will be able to perform a better service then they are now performing by rail on less than carload shipments. A better service than you are now giving?

(Discussion off record).

Mr. Abeles: I think we have gone far enough along this line of inquiry. I think that is all.

Redirect examination.

By Mr. Watkins:

Q. Mr. Koonce, when you began this service from Raleigh to Richmond, you began a different type of service than that that was in existence at the time by railroad?

A. That's true.

Q. And the railroad is proposing to begin the same type of service that is now in existence by motor carriers?

Mr. Abeles: You are not putting that in the witness' mouth, are you?

[fol. 883] Mr. Watkins: No more than you have been testifying for the last few days.

Mr. Abeles: You don't think that those are the conclusions that can be drawn from the testimony here, do you?

Mr. Watkins: Well, let the Commission draw the conclusions.

The Witness: Shall I answer that question.

Mr. Watkins: You don't have to answer.

By Mr. Watkins:

Q. Do you interchange with other motor carriers, do you not?

A. Yes.

Q. And to and from points between Henderson and Richmond, you interchange with other carriers that handle ship-

ments to and from Wilmington, Columbia, Charlotte, Rutherfordton, and points in that general area?

A. Yes.

Q. Would you be willing to interchange traffic with the Seaboard Air Line railroad for these points that you serve at either Richmond or Henderson?

A. Yes.

Mr. Abeles: You would be willing to take it all, in other words, would you?

The Witness: I said I would like to give them a break if they are going to make $48,000 a year on the operation. I mean that I would like to get a break.

[fol. 884] Mr. Abeles: If I understand your last statements summarized are that you would be glad to take our traffic, but would not be willing to share yours with us.

The Witness: We are only too glad to share traffic with you to the points we do not serve.

Mr. Abeles: Not to the points you do serve?

The Witness: Not unless it is with the points you could serve to better advantage than we could.

Mr. Abeles: In other words, still revolves itself in the same proposition. You would not be willing to short haul yourself.

The Witness: Generally speaking no.

(Discussion off record).

Mr. Watkins: That is all.

(Witness Excused).

R. G. Young was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. What are your initials?

A. R. G.

Q. Where do you live?

A. Henderson.

Q. What company are you connected with?

A. The United Express Company.

Q. How long has that company been in operation?

[fol. 885] A. I think it was started in 1932.

Q. And what territory do you serve?

A. Runs from Henderson to Norlina and from Norlina to Weldon.

Q. Is that all of your operations?

A. Yes, sir, and return.

Q. And what type of service do you have between Henderson and Norlina?

A. We have one truck that returns.

Q. And you serve the intermediate points?

A. Yes.

Q. Are there other truck lines competing with you for the business at the points between Henderson and Norlina?

A. Yes, sir.

Mr. Abeles: I'm not objecting to that type of question here for I think the witnesses ought to be confined to their own companies if other companies are operating here——

The Chairman: I don't know. I think that is competent as tending to show the number of operators and forming a basis where by the commission might conclude that the territories were sufficiently served.

Mr. Abeles: If those other companies desired to appear. They could have appeared here and done so.

The Chairman: I think that would be competent. Overruled and exception.

By Mr. Watkins:

Q. Do you know approximately how many concerns you [fol. 886] compete with in that area?

A. I would say approximately 15 or 20.

Q. You think those points are amply served by motor carriers?

A. Yes, one passing you nearly all the time.

The Chairman: What?

The Witness: There is one passing there nearly all the time.

By Mr. Watkins:

Q. Has it come to your attention from anybody that there was any public demand for additional service in that area?

A. No, sir. I haven't heard of it.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. You say there are 15 or 20 motor carriers operating between Norlina and Henderson?

A. Something like that.

Q. Are they all certificated common carriers?

A. Right many of them are. I think most of them are. Mr. Koonce named about 10, I think, and he didn't get all of them.

Q. Serving all intermediate points?

A. Yes, put off anywhere along the highway at those stations.

Q. Then you think one more wouldn't hurt?

A. Well, I don't know, sir. Right many there now.

Q. Your operations are concerned, as I understand it, between Norlina and Henderson so far as the route covered by this proposed service is concerned, is that correct?

[fol. 887] A. Yes, we run from Henderson to Norlina to Weldon and return in the afternoon.

Q. You couldn't help us beyond those points?

A. That is all the places we cover.

Q. How far is it between Henderson and Norlina?

A. About 18 miles.

Q. You want us, as I understand it, to give you our traffic at Norlina and Henderson and then take it back at those points?

Mr. Watkins: I don't think he testified to anything like that.

Mr. Abeles: I'm going to ask him.

Mr. Watkins: You stated "You want us".

Mr. Abeles: I'm trying to get his position clear.

Mr. Watkins: The witness testified only to the present service between those two points.

The Chairman: He is confining this question to that between Norlina to Henderson and intermediate points about two or three of them there, three, I think.

Mr. Abeles: I'm asking the witness whether he is proposing or whether it is his position that we should employ his truck service by interchanging with him at Norlina, permitting him to haul it 18 miles to Henderson and then giving it back to us. We want to carry it beyond by rail.

The Witness: I don't propose anything like that.

By Mr. Abeles:

Q. Do you advocate anything like that?

[fol. 888] A. No, sir.

Q. You don't think that would be reasonable?

A. I don't think that would be reasonable.

Mr. Abeles: That is all.

Mr. Watkins: I have got 7 that are scheduled to be here. You see there are 20 on the lines.

The Chairman: It is five o'clock, we will adjourn now until tomorrow morning at 9:15 o'clock.

(Whereupon the hearing adjourned until tomorrow, Tuesday June 15, 1937, at 9:15 o'clock.)

[fol. 889] Second Session

Raleigh, N. C., June 15, 1937, 9:15 o'clock

The Chairman: We are ready now to continue with the cases of the protestants.

B. L. Frazier was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected, Mr. Frazier?

A. Barnwell Brothers, Incorporated, Burlington, North Carolina.

Q. What is your position with that company?

A. Traffic manager.

Q. How long has that company been in operation?

A. Since the year, 1931.

Q. Describe the territories through which you operate?

A. As to this hearing, we operate over route No. 1 from Richmond to Henderson.

Q. What other points do you operate to?

A. We operate as far south as Columbia, South Carolina, through Charlotte, as far west as Shelby and Asheville. We operate north through Richmond to New York, and northwest to Scranton, Pennsylvania.

Q. Do you serve intermediate points?

A. Yes, sir.

Q. Do you serve intermediate points between Richmond [fol. 890] and Henderson?

A. We serve those points, that is with our own equipment, when the volume of the traffic is sufficient. That generally means 5000 pounds or more for one consignee or one point of delivery, otherwise we serve them through a connection.

Q. At what points do you connect for those points?

A. We connect at Henderson, N. C., and also Richmond, Va.

Q. Do you know approximately how many other companies operate through that area?

A. I would hate to hazard a guess. I should think there are 15 or 20 regular operators that are serving the territory.

Q. Have you ever heard any demand for any additional service at that point?

A. No, sir.

Q. Do you interchange with other truck companies serving the southeast and eastern seaboard, generally?

A. Yes, sir, we do. We interchange with lines at Raleigh, serving eastern Carolina at Fayetteville, and also Charlotte. That is with lines that serve the Western Carolina territory.

Q. Have you seen any demand for additional service in this territory?

A. I have not, sir.

Q. Or particularly the territory between Henderson and Richmond?

A. No, sir.

[fol. 891] Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Frazier, what did you say your position with the company was?

A. Traffic manager.

Q. I understood you to say in reply to Counsel's question to whether you served points intermediate between Richmond and Henderson, that you did so provided you had a load of 5000 pounds or more to one consignee, is

that correct? Or to one destination, otherwise that you provided that service through connections?

A. Yes.

Q. Then in the event that you were offered a shipment by the Seaboard from South of Henderson to intermediate points between Henderson and Richmond of less than 5000 pounds you would not accept that as I understand?

A. Under our present operations, no.

Q. Mr. Frazier, have you filed your interstate tariffs to all points served by you?

A. Yes, sir.

Q. Have you filed a tariff covering Dinwiddie?

A. Without knowing the exact location of Dinwiddie, I hesitate to answer that. But if it is on highway No. 1 between Richmond and Henderson, yes, sir.

Q. (Shows him a map.)

A. Yes, we have.

Q. Do you publish your own tariffs or are you party to [fol. 892] Miller's tariff?

A. We are a party to Miller's tariff.

Q. Mr. Frazier, I'm handing you a copy of the tariff designated as MF-ICC No. 2, commonly known, I believe as Miller's Tariff, and look at Dinwiddie in that tariff and tell me whether you are shown as publishing tariffs covering that point?

A. This is Horton tariff. Well, to answer your question, we are not listed there as serving Dinwiddie. However, under the method noted in the tariff, we would apply Petersburg rates or Richmond, whichever point is shown.

Q. The nearest point to and from which your tariffs are published in Miller's tariff?

A. Yes, sir.

Q. And you have no specific rates to Dinwiddie but you would apply the tariff covering the nearest points between Dinwiddie intermediate?

A. That's right.

Mr. Abeles: That is all.

(Witness excused.)

C. A. DUGGAN, JR. was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. What is your name?
A. C. A. Duggan, Jr.
Q. With what company are you connected?
A. Horton Motor Lines, Incorporated, Charlotte, N. C.

—. ——.

[fol. 893] A. Traffic Manager.

—. ——.

A. Well, I don't know just exactly the date, it was previously a receivership and Mr. Horton, Horton Motor Lines, Incorporated, either the latter part of 1930 or the first of 1931. I don't remember just which.

Q. Do you know whether or not you filed application with ICC with rights to operate?
A. Yes.
Q. What territory do you operate in?
A. Do you mean with our own units?
Q. Yes, sir.
A. We operate direct from Charlotte through Greensboro, Raleigh, Henderson, Richmond, Baltimore, into New York City, from Baltimore up to Wellingsboro on up to Harrisonburg, from Greensboro up to Shenandoah Valley, through Cumberland Mountains and Pittsburgh. If we have our own units we work out of Shelby terminal, Rutherford, Cliffside, Henrietta; and out of Hickory, we work Morganton, and the intermediate points around Hickory, Granite Falls, Newton, and Conover.

Q. Do you serve territory between Richmond and Henderson?

A. Yes, sir. We have regular schedules going through there.

Q. About how many trucks a day do you have going through that route?

A. We have regularly 13 schedules each way.

Q. Thirteen schedules each way?

A. Yes.

[fol. 894] Q. Are you connected with other motor carriers covering the south and eastern seaboard, generally?

A. Yes, we interchange at Richmond, Henderson, Greensboro, and Charlotte.

Q. Have you seen any need or any demand for additional service between Henderson and Richmond?

A. No, sir.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. You say you operated 13 schedules each way between Richmond and Henderson?

A. Yes, that is our regular schedule.

Q. Do they all perform local and intermediate service?

A. Well, if there is a need for it. Yes, there is very seldom any need for it.

Q. What I'm trying to get at is this. Are any of these schedules through without local stops?

A. Well, they are all supposed to go through without local stops, unless there is traffic at those points.

Q. On any of those schedules do you load exclusively through traffic?

A. That would be hard to answer.

Q. You don't know.

A. I don't know just what the loading is to be composed of.

Q. What I'm getting at is this, Mr. Duggan, on all of [fol. 895] your schedules will you make local stops provided there is cargo for intermediate points?

A. Yes, if there was traffic to warrant it. Otherwise it is handled in connection with connecting lines.

Q. Have you any limitations such as Mr. Frazier stated with reference to the size of loads which you will accept?

A. I didn't put any specific limitations on it at all.

Q. You are catering, are you not, primarily to through business?

A. That's right.

Q. And you do not encourage that? You take through business in preference to local business?

A. That's right, but I wouldn't say we take it in preference to it. We solicit the through business, naturally more than we do the local business.

Q. If you had such a volume of traffic on any given day moving in a given direction, that you could not carry it all in your scheduled trucks you would give the right of way

to your through business, would you not, and delay the local business?

A. We would operate extra trucks.

Q. If you had them.

A. Yes.

Q. If business was too great for the number of trucks which you had available, you would give priority to your through moves, would you not?

[fol. 896] A. We have never run into that condition. I don't now.

Mr. Watkins: How many trucks have you got?

Mr. Abeles: Just a moment.

Mr. Watkins: How many trucks have you got?

The Witness: I declare I don't know. I couldn't tell you exactly. Well, 369 was the last figure that I had, I believe.

Mr. Abeles: That is all.

Mr. Watkins: That is all for the protestants.

(Witness excused.)

The Chairman: Anything further from you, gentlemen?

Mr. Abeles: Mr. Chairman: I'm not sure what the procedure is in Motor Carrier proceedings regarding the introduction in evidence of ICC tariffs. I believe in other cases, it is the practice to permit incorporation of such tariffs by reference provided they are properly designated or sufficiently designated to identify them clearly. Before proceeding, I should like to be enlightened on that point.

(Discussion off record.)

Mr. Abeles: I wish to offer in evidence, supplement 4, to ICC tariff, MF-ICC No. 2, effective May 30, 1936, issued by J. B. Dempsey, under rules of practice issued May 10, 1937. The Commission has provided that except as indicated in the special rules there promulgated, proceedings under the Motor Carrier Act, 1935, are governed by the applicable or [fol. 897] analogous provision of the Commission's rules of practice. Rule 13 (C) of these rules provides as follows, "In case any matter contained in a tariff schedule on file with the commission is offered in evidence, such tariff schedules need not be produced or marked for identification, but the matter so offered shall be specified with particularity in such manner as to be readily identified, and may be received in evidence subject to check by reference to the original tariff

schedules so on file." Pursuant to that rule I wish to offer in evidence by reference, MF-ICC, No. 2, this is a correction of my previous reference. MF-ICC, No. 2, effective April 1, 1936, issued by J. B. Dempsey, Agent, and all amendments and supplements thereto. I explain that my purpose in offering this tariff is this, there has been a volume of testimony regarding the number of carriers serving the routes involved in this proceeding. It has been, of course, impossible for us to check currently whether or not those carriers professing to operate over this route and serving intermediate points thereon, have filed tariffs in accordance with the existing requirements. And I wish this tariff in evidence so that that can be checked if the question becomes of importance.

Mr. Watkins: Mr. Commissioner, I want to object first on the ground that he has not complied with the rules of the commission by identifying the part of the tariff he is attempting to introduce in particularity as required by the rule. I also want to object on the grounds that this tariff [fol. 898] does not show ever- point to which service is offered by Motor Carriers, parties thereto. Nor does it refer to all of the Motor Carriers that are operating over this line, but only to those that are members of the Southern Motor Carriers Rate Conference; and I do not think that he has complied with the rule nor has he put in by this method any evidence that is of any weight whatsoever in this matter.

The Chairman: Now the weight of the evidence is something to be considered by the commission in reaching its final conclusion in this matter. So far as the tariff goes we think it is competent to show what it does show. And it will be admitted subject to check as provided for in the rule mentioned at the time the tariff was offered in evidence.

Mr. Watkins: Do you think he has complied with the rule by describing in particularity?

The Chairman: Seems to me he has identified if there in such a way it can be found by the commission, what the purpose of it is——

Mr. Abeles: I think my explanation of the purpose of the tariff sufficiently justifies the introduction of the entire tariff rather than any part of it.

Mr. Watkins: May I note an objection.

The Chairman: Yes. Objection by the protestant overruled and exception.

Mr. Watkins: Now, may it please the commission, I want to incorporate into the record by specific reference item 27 [fol. 899] A, in supplement No. 1, to the tariff introduced by applicant, reading as follows:

"A. Rates for any point of origin (see note) via any carrier a party hereto from which rates are not provided in connection with such carrier, will be the same as published herein from the next most distant point for account of such carrier."

"B. Rates to any point of destination (See note) via any party a party hereto, to which rates are not provided in connection with such carrier, will be the same as published herein to the next most distant point for account of such carrier."

"Note. No carrier is obligated under this rule to accept shipments from or to such points at which they do not have facilities for service."

The Chairman: That part of the tariff offered by the protestants and particularly referred to by the protestants' counsel, will be admitted in evidence.

The Examiner: I would like to ask a question of counsel for protestants. Is it possible to determine from any part of the tariffs so far admitted in evidence, what carriers serve the routes involved in this proceeding? That is to say, between Richmond, Virginia, and Henderson, North Carolina?

Mr. Watkins: I don't think such could be determined with any degree of accuracy from the tariff. I think that must [fol. 900] necessarily rest upon the testimony of witnesses of those lines. That note was put in there so that carriers could give service to those intermediate points.

The Examiner: My point is this: You have referred particularly to a specific note. Is there a possibility of referring particularly, and I ask counsel for both sides, in regard to this tariff in that respect, to any particular list or portion of the tariff which would show what carriers were included in the tariff, purporting to serve this route?

Mr. Watkins: No, I do not think it is at all possible, and I urge that as an objection.

(There was a discussion off the record.)

The Examiner: Is there any way to tell by the participation or concurrences in this tariff which of these carriers

purport to serve points upon this route directly with their own equipment or whether they purport to serve it by interchange or connections? Is there any way to distinguish what the different carriers do?

Mr. Watkins: I say that it cannot be done from this tariff in any way. It cannot be done from this tariff, and as an example, I want to show you that on pages 117, 118, and 119 of the original tarriff——

The Examiner: Referring to the original tariff specifically.

The Chairman: Was that the tariff offered by the petitioner

[fol. 901] Mr. Watkins: Yes, Agent Dempsey's MF-ICC No. 2, and on those pages you will find over ninety carriers listed as giving irregular service between all points in North Carolina and Virginia. And under the tariff as constructed, those carriers might or might not maintain service between the points on this line; but until their applications have been determined by the Commission, it was necessary to set up a tariff that did not tie them down to any particular route until such times as their applications were passed on. The only way from any records that this could be determined, is by reference to the applications on file with the Commission.

The Chairman: Let me ask you this. Did you offer that tariff for the purpose of showing the number of operators on this route, number of motor operators between Richmond and Henderson?

Mr. Abeles: No.

The Chairman: Or the rates and charges applicable?

Mr. Abeles: No, Mr. Chairman, my purpose in introducing this tariff was simply to provide us with a check to determine whether or not the carriers who in this proceeding have professed to serve the points on this route, have published tariffs which under the Commission's tariff regulations they would be required to file with the Commission as a prerequisite to serving those points, not to enumerate the carriers actually operating over this route, but merely [fol. 902] to check whether or not they have complied with the Commission's tariff regulations in such manner as to permit them to serve the intermediate points on this route. I can't say at this time whether I shall ever use or refer to this tariff.

The Examiner: The Examiner's inquiry was due to some implication which he apparently got into his mind through

a misinterpretation of your statement. It was that you had not had opportunity to check who the carriers were who operated upon this route and that was part of your purpose in asking the admission of the tariff. Personally, the Examiner feels that for that purpose, the tariff might show many concurring carriers who never operate physically over that particular route.

Mr. Watkins: I had specifically refrained from referring to this tariff because I realized that under this tariff there are some operators shown by reference to routes in here as serving those points that don't maintain a service there. I have attempted to try to tie it down to where it would be of some value to the Commission.

The Chairman: I think with the explanation of Mr. Abeles, that it is not offered for the purpose of showing the number of carriers, but for the purpose of showing that, the requirements and restrictions placed upon the carriers who actually do operate, that it is perfectly competent.

[fol. 903] Mr. Watkins: Mr. Commissioner, that being the case, I think the only thing that we can do is to put into evidence all of the tariffs of all of the carriers that are involved so that we can see whether or not there are other limitations in other tariffs that would affect this evidence; and, therefore, I want to offer in evidence all of Agent Miller's tariff, formerly Agent Dempsey's, numbered MF-ICC No. 1, through MF-ICC No. 85, for the purpose of allowing counsel for applicant to reall find out what service there is between Henderson and Richmond.

Mr. Abeles: We have no objection to that, Mr. Chairman.

The Chairman: All right.

(Discussion off record.)

Mr. Watkins: (To the reporter) Make that 88, instead of 85. They have got three more out.

(Discussion off record.)

The Chairman: Is there anything else?

Mr. Abeles: Mr. Chairman, I have not yet moved, and I now do so, that the evidentiary parts of the application filed in this proceeding be considered a part of the record.

The Chairman: I will ask Mr. Stanly a question or two. You signed the application under oath, did you not?

Witness Stanly: Yes, sir.

The Chairman: Are all of the exhibits which are contained, evidence of records and other evidence on behalf of [fol. 904] applicant, true and correct to the best of your knowledge and belief?

Witness Stanly: They are.

Mr. Watkins: We have no objection.

The Chairman: The ruling is that they will be considered in evidence.

Mr. Abeles: That is all.

Mr. Watkins: Is that all?

Mr. Abeles: Yes.

The Chairman: Do you want to file briefs?

Mr. Watkins: Mr. Commissioner, in view of the motion that has been made, I will probably desire to file a brief in all of the series of cases supporting that motion. In such brief, it will probably be necessary for me to refer to some of the other facts in it, so I want to reserve that right.

There is one other thing I want to put on the record, Mr. Chairman.

(Discussion off the record.)

The Chairman: Since it is understood that the brief will to some extent and perhaps almost altogether, goes to the questions raised in a motion filed by the intervener, which has also been filed in cases heard at Columbia, South Carolina, on June 11 and 12, in which cases the brief date was set as July 12, 1937, the Board will set the brief date in this [fol. 905] case also at July 12, 1937, as it is understood that it may be one brief.

If extensions are necessary, of course they will have to be obtained from Washington.

Mr. Watkins: Mr. Chairman, since this record has begun, I have received inform[illegible] from the Interstate Commerce Commission in Washington that the Joint Board must first rule on my motion for consolidation. Thus, I want to at this time remake my motion for consolidation, and ask this Joint Board to please give a ruling on it.

The grounds for this motion are the same grounds stated at the beginning of the hearing.

The Chairman: Yes, and we ruled against it. The motion is again denied, to which denial the intervener excepts. We still feel that since the Interstate Commerce Commission set these cases before different Boards, whether they did it wisely or not, is not for us to say; but it now involves the

jurisdiction of different Boards, and this Board cannot attempt to control by consolidation what other Boards will have before them. Having set them before four different Boards, this Board does not feel it has the power, nor if it had the power, would it attempt to say that the should be consolidated, in view of the fact that the Interstate Commerce Commission in its discretion divided them into four [fols. 906-907] groups before four Boards.

Is that all?

Mr. Abelos: Yes, sir.

Mr. Watkins: That is all.

The Chairman: That concludes this case, gentlemen.

(Whereupon, at 10:20 o'clock a. m. on June 15, 1937, the hearing was closed.)

[fol. 908] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. MC 86687
Sub—No. 2

In the Matter of the Application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) a Corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8—Sub. No. 2, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of North Carolina, Between Henderson and Raleigh, North Carolina.

No. MC 86687
Sub—No. 4

In the Matter of the Application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) a Corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8—Sub. No. 4, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of North Carolina, Between Hamlet and Raleigh, North Carolina.

No. MC 86687
Sub—No. 5

In the Matter of the Application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) a Corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8—Sub. No. 5, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of North Carolina, Between Hamlet and Wilmington, North Carolina.

[fol. 909]

No. MC 86687
Sub—No. 6

In the Matter of the Application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) a Corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8—Sub. No. 6, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of North Carolina, Between Monroe and Rutherfordton, North Carolina.

Rooms of the N. C. Utilities Commission,
Raleigh, North Carolina,
June 15, 1937, 9 o'clock a. m.

Met pursuant to notice.

Before: Joint Board No. 103, consisting of: Hon. R. O. Self, Chief Clerk of the N. C. Utilities Commission, Raleigh, North Carolina, Chairman.

Present: W. W. McCaslin, Examiner, Bureau of Motor Carriers, Independence Building, Charlotte, N. C.

APPEARANCES:

Chas. T. Abeles, SAL Ry. Bldg., Norfolk, Va., appearing for the Applicant.

Edgar Watkins, Jr., Bona Allen Bldg., Atlanta, Ga., appearing for Southern Motor Carriers Rate Conference.

W. P. Horton, Pittsboro, N. C., appearing for P. & F. Motor Lines.

[fols. 910-912] Proceedings

The Chairman: The Interstate Commerce Commission has set for hearing at this time and place, before Joint Board No. 103, Docket MC 86687, Sub. No. 2, application of the Receivers of the Seaboard Air Line Railway for a certificate as a common carrier of commodities generally, in interstate commerce, between Henderson and Raleigh, North Carolina. This case will be again called and proceeded with following the conclusion of the hearing on Docket No. MC 86687, Sub. No. 7, now on hearing before Joint Board No. 7.

The Interstate Commerce Commission has set for hearing at this time and place, before Joint Board No. 103, composed of R. O. Self, of North Carolina, Docket No. MC 86687, Sub. No. 4, application of Seaboard Air Line Railway, the Receivers, for a certificate as a common carrier of commodities generally in interstate commerce between Hamlet and Raleigh, North Carolina. This case will again be called and proceeded with after the conclusion of Docket No. MC 86687, Sub. No. 7, now on hearing before Joint Board No. 7.

The Interstate Commerce Commission has set for hearing at this time and place, before Joint Board No. 103, composed of R. O. Self, of North Carolina, Docket No. MC 86687, Sub. No. 5, application of the Receivers of the Seaboard Air Line Railway for a certificate as a common [fol. 913] carrier of commodities generally, in interstate commerce, between Hamlet and Wilmington, North Carolina. This case will be again called and proceeded with upon conclusion of the hearing in Docket No. 86687, Sub. No. 7, now on hearing before Joint Board No. 7.

The Interstate Commerce Commission has set for hearing at this time and place, before Joint Board No. 103, composed of R. O. Self, of North Carolina, Docket No. MC 86687, Sub. No. 6, application of the Seaboard Air Line Railway Company, Receivers, for a certificate as a common carrier of commodities generally, in interstate commerce, between Monroe and Rutherfordton, North Carolina. This case will be again called and proceeded with upon the conclusion of Docket No. MC 86687, Sub. 7, now on hearing before Joint Board No. 7.

(Whereupon, a recess was taken.)

10:30 a. m., June 15, 1937.

The Chairman: We will come to order, gentlemen. This is MC 86687, Sub. No. 2, the matter of the application of the Seaboard Air Line Railway, Legh R. Powell, Jr., and Henry W. Anderson, Receivers, for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in transportation of commodities generally, in interstate commerce, in the State of North Carolina, between Hen-
[fol. 914] derson and Raleigh, North Carolina.

Is the petitioner ready?

Mr. Abeles: Yes, Mr. Chairman.

The Chairman: Will you give us the appearances?

Mr. Abeles: Charles T. Abeles, and Murray Allen, for the applicants.

Mr. Watkins: Edgar Watkins, Jr., representing the Southern Motor Carriers Rate Conference, an organization of more than 400 motor carriers operating to, from and between points in Southern territory, most of them directly in competition over the routes this application covers, appearing in protest of the application, on the grounds that there is adequate service over this route, and that there is no public convenience and necessity for additional service.

The Examiner: You will file a formal petition of intervention stating formally those grounds, within ten days, serving the necessary parties with copies?

Mr. Watkins: I will do that.

Mr. Self: The rules of the Interstate Commerce Commission require us to get some information with reference to those who are entitled to practice before the Interstate Commerce Commission, and its Boards. Mr. McCaslin will now request that information.

The Examiner: I take it that the gentlemen who have entered appearances as counsel in this case are all admitted
[fol. 915] to practice before the Commission, is that true?

Mr. Abeles: I am, Mr. Examiner.

Mr. Allen: So am I, Mr. Examiner.

Mr. Watkins: I am.

The Examiner: I should announce in case there is present a person who wishes to appear in a representative capacity, who is not an officer, or any one of the parties, or a party, himself, such a person can appear one time at hearings where he first hears this announcement in regard to the

requirement. The Commission is lenient in that respect. Such persons will not be allowed to appear, however, in future hearings at future dates after they have heard such announcement. They will be expected to apply.

No copies of the transcript will be furnished free. Any persons desiring copies have to arrange with the reporter. All those desiring copies will give written request to the reporter during the hearing.

(Discussion off record.)

Mr. Watkins: Mr. Chairman, notices sent out by the Interstate Commerce Commission indicate that there has been set on this date four applications of the same applicant for extensions of operations. They are the ones which you have announced. There is Docket No. MC 86687, Sub. 6, requesting an extension of operations between Monroe and Rutherfordton, North Carolina; Docket No. MC [fol. 916] 86687, Sub. 5, asking for extension of operations between Hamlet and Wilmington, North Carolina; and MC 86687, Sub. 4, for an extension of operations between Hamlet and Raleigh, North Carolina. They are all set for hearing before Joint Board 103. Prior to this time, counsel for protestants has filed with the Interstate Commerce Commission a petition to consolidate these four dockets, as well as four other dockets previously heard by other Joint Boards. No action has yet been taken by the Commission on that motion, and I desire to file that motion with you and urge its adoption.

(Files written motion with the Joint Board.)

Mr. Watkins: The grounds are stated in the motion which I have just filed.

The Chairman: It will be received and placed in the record, or filed with the record.

Mr. Abeles: Before you rule on that, I would like to state for the record that it is my understanding that counsel for protestants proposes to file a brief directed to the issues raised by his motion. In view of that fact, I shall not argue extensively the applicant's position with respect to those issues at this time, but preserve the right, of course, to file a written brief within the time fixed by the Board. I would like to say in this connection, that I desire to call to the attention of the Board that the formal notices promulgated by the Commission setting this and other cases

[fol. 917] for hearing, referred to the applications as "applications for extensions of operations," whereas in the particular case now before the Board, the application was filed not as an extension, but as a separate operation. Why the Commission in its notice characterized the application as one seeking an extension of operations, I cannot say; but I do wish to state that we neither applied for nor did we conceive of the proposal here involved as an extension of an existing truck operation.

The Chairman: The Board announces the denial of the motion for the reason that four of the cases have already been heard, and heard by other Boards.

Mr. Watkins: I wish to note an exception to that ruling.

Now, may it please the Chairman, I want to move that Dockets MC 86687, Subs. 2, 4, 5, and 6, be consolidated as those have not yet been heard and are set before the same Joint Board, and when viewed in connection with the present truck operation of applicant between Monroe and Hamlet, form a complete unit connecting at common points, which in effect creates an operation from Henderson, North Carolina, on the north, to Hamlet, North Carolina, on the south, and from Wilmington, North Carolina, on the east, to Rutherfordton, North Carolina, on the west, with no points between that are not served by motor carrier operations under these applications—not proposed to be [fol. 918] served under these applications, or presently served by an application of this applicant.

(Discussion off record.)

Mr. Abeles: Mr. Chairman, in the interest of expedition of these hearings, I have no objection to the consolidation proposed by counsel for the protestants, with the understanding, however, that the cross-examination will proceed in the same order as though the consolidation had not been made. In other words, that each witness produced by the applicant will be cross-examined with respect to his testimony immediately following that testimony.

The Chairman: The motion to consolidate the cases now before Joint Board No. 103, is granted, for the reason that the cases are before the same Board, by the same applicant, and much of the testimony that would apply to one, is common to the other.

Mr. Horton: I would like to ask permission of the Commission to enter an appearance, this being my first and only one.

Mr. Abeles: Have you filed your appearance?

Mr. Horton: I was going to.

The Chairman: Very well. Mr. Horton is a licensed attorney.

Mr. Horton: Licensed to practice before the State and Federal Courts, not the Interstate Commerce Commission. [fol. 919] The Examiner: Since Dockets MC 86687, Subs. 4, 5, and 6, have been consolidated with Sub. No. 2, in regard to which I made an announcement covering admission to practice and the necessity for petitions of intervention, the same announcement will apply to the cases so consolidated as it did to the first in which the statement was made.

I might add that the request of Governor Horton, just made, is a proper one, in view of the announcement made in regard to the necessity of application applying strictly only where one has already heard it in a previous case—the announcement of the necessity for such admission. Since this is his first appearance in such cases in which announcement was made, of course the Commission is supposed to allow him to appear.

The Chairman: You take the position with reference to cross-examination, Mr. Abeles, because of the fact that you expect to put witnesses on for each one of these cases and are not going to have any particular witness that will cover any of the pertinent facts in all of the cases?

Mr. Abeles: I expect to have witnesses, Mr. Chairman, whose testimony would be applicable to all of the cases. My reservation, however, was made with regard to the testimony of all witnesses, including those, too. So far as concerns the witnesses whose testimony is referable to the specific cases, we will have one witness who will testify [fol. 920] with respect to the issue of public convenience and necessity raised in three separate cases. It is my understanding that Mr. Watkins wishes to reserve his cross-examination of that witness until the testimony on all cases is completed, so that he will be required to cross-examine that witness only once with respect to his testimony on all three cases. That proceeding is not satisfactory to us. We want the cross-examination of that witness with regard to each case, to follow immediately upon the direct testimony in that case.

The Chairman: Was it your intention to wait until all of the direct evidence was in and then cross-question all of the witnesses, one following the other?

Mr. Watkins: No, sir, my intention, in view of the fact that the cases are consolidated—I believe all of the direct testimony of each witness should be finished before I cross-examine that witness. I am asking simply for the ordinary and usual procedure.

The Chairman: That is the usual procedure, and I think that of course it is always probable that a witness will be called back to ask him something, then he is subject to being cross-questioned then about that particular thing; but I think that we shall proceed in the usual manner, and if the witness is a general witness, the cross-examination is going to be general, and so forth, so the motion as made has been granted and the petitioner will proceed to put on his wit-
[fol. 921] nesses, his evidence, and then when the direct testimony is presented, the witness can be cross-examined. And I think we will make time that way. I can't see where it acts adversely to the petitioner.

(Discussion off record.)

Mr. Abeles: If the Chairman pleases, it is my understanding that the consolidation was granted with the privilege of counsel for the protestants to withhold cross-examination of the same witness who is testifying in separate cases until that witness' testimony is completed in all of the cases. Is that correct?

The Chairman: I think so. If you put one witness on and he completes his direct testimony with reference to either one or all that he testifies in, then when he completes that, his direct testimony, then the other side would have opportunity to cross-examine him.

Mr. Abeles: I am not questioning that. I want to know whether the ruling is that if Mr. Rogers, who is to testify in three cases, completes his testimony in the first case in which he testifies, the cross-examination of Mr. Rogers on that particular case will proceed immediately, or are we to be compelled to present Mr. Rogers' direct testimony on all three cases before cross-examination will be called for?

The Chairman: That was my understanding of con-
[fol. 922] solidation, yes. I think that would be the only reason for which it should be consolidated.

Mr. Abeles: Not at all, Mr. Chairman. The principal purpose of consolidation is to permit the testimony of two witnesses which will be common to all cases, to be given once instead of four times.

The Chairman: Isn't that true, also, of some of protestants' witnesses?

Mr. Abeles: That may be true as to that. I can't say. So far as our testimony is concerned, the principal purpose of the consolidation is, as I have just stated; we are not agreeable to the consolidation if it means that counsel for protestants is to have the right to reserve his cross-examination until the witness, who will be the same witness in three cases, completes his testimony on all three cases, whereupon Mr. Watkins and other counsel for protestants will cross-examine them with respect to all of these cases.

The Chairman: What do you mean by consolidation, then?

Mr. Abeles: As I say, it will consolidate the testimony of two witnesses whose testimony will be common to all cases, thus reducing eight appearances, to two.

(Discussion off record.)

The Chairman: I am going to permit that, with the understanding that the convenience and necessity will vary in this case. For that reason, I am going to permit that pro-
[fol. 923] cedure, to cross-question any witness that may testify with particular reference to any case, immediately after the direct testimony.

Mr. Watkins: I want to object to that. That is going to make the cross-examination three times as long as it would be otherwise.

The Chairman: We can't help that. We have got to make the record here, and it has got to be made intelligently, if we can make it that way. So the petitioner will proceed.

Mr. Watkins: I understand, then, that after I have cross-examined a witness on sub. 2, I cannot later in the hearing go back and ask him more questions about sub. 2?

The Chairman: No, that does not mean that.

Mr. Abeles: Now, Mr. Chairman, I think that he has got to announce, when a witness gets on the stand testifying in case "A," at the close of the cross-examination, he must announce that he has closed and not be permitted to come back at some later time and continue that cross-examina-

tion; because, otherwise, the whole effect of the ruling and the purpose for which I have been insisting upon the reservation, is nullified.

The Chairman: We will rule on that when it arises: You may proceed.

Mr. Abeles: This is Sub. No. 2, the Raleigh-Henderson application.

[fol 924] The Chairman: We are now taking up Sub. No. 2?

Mr. Abeles: Yes, sir. I will call Mr. Terrell for the purpose of testifying in Docket No. MC 86687, Sub. No. 2.

H. M. Terrell was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Terrell, please state your name, residence, and occupation.

A. H. M. Terrell, Raleigh, North Carolina, Division Superintendent of the Virginia Division of the Seaboard Air Line Railway.

Q. How long have you been superintendent of this Division, Mr. Terrell?

A. Twenty months.

Q. What position did you occupy—briefly?

A. Trainmaster in this same territory for twelve years.

Q. Does your territory cover the route of the Seaboard between Raleigh and Henderson, North Carolina?

A. It does.

Q. Does the route of the proposed application follow the rails of the Seaboard between those two points?

A. It does.

Q. Now, will you state what the proposal involved in this application is?

[fol. 925] A. It is a proposal to operate trucks handling less than carload business between Raleigh and Henderson, by Louisburg.

(The answer is read by the reporter.)

Q. Will you state the schedule of the proposed truck operations?

A. One truck is to leave Henderson at six a. m., and arrive at Raleigh at ten a. m. The second truck is to leave Henderson at 6:15, arrive at Raleigh at 9:50 a. m. The northbound truck is to leave Raleigh at 1:30 a. m., arrive Henderson at 5:00 a. m. The second truck is to leave Raleigh at 1:45 p. m., arrive at Henderson at 5:00 p. m.

Q. Then I understand there will be two trucks in each direction?

A. That is correct.

Q. Daily?

A. Daily except Sunday.

Q. Now, Mr. Terrell, will you proceed without interruption to explain the purpose the applicants have in mind in establishing the proposed truck service?

A. Yes. It is proposed to establish this service to advance the movement of less carload freight in this territory. The Seaboard now handles nightly a car loaded at Hamlet Transfer, which contains freight coming from Florida, Georgia, Alabama and the Mid-western section of the United States through connections, destined to Raleigh and [fol. 926] likewise, a similar car from Hamlet Transfer destined to Henderson. Under the proposed truck arrangement, this car loaded at Hamlet Transfer will contain, not only freight for Raleigh proper, but for all points between Raleigh and Henderson, exclusive of Henderson. This freight for points between Raleigh and Henderson, exclusive of Henderson, will be transferred from the car to a truck at Raleigh and handled by it to all intermediate points —the truck leaving Raleigh at 1:30 a. m. and arriving at Henderson at 5:00 a. m., thus insuring freight for all points between Raleigh and Henderson, exclusive of Henderson, being in the depots at the time the agency opens in the morning, as compared to present hours of delivery, varying from 7:40 a. m. at Neuse to around 3:30 p. m. at Kittrell. The local freight train moves north from Raleigh three days a week and south from Henderson three days a week. When it moves south from Henderson, this freight from south of Raleigh and Raleigh would be carried to Henderson by night freight train and then handled back by the local next morning—leaving Henderson at 9:15 a. m.—the deliveries at intermediate stations being 9:35 a. m. at Kittrell and around 4:30 p. m. at Neuse.

Freight moving from points intermediary between Raleigh and Henderson and destined to Richmond and/or Portsmouth, will be carried by truck to Henderson during the day and there loaded in a car destined to those two [fol. 927] points, being expedited 24 hours as compared to present train service.

With reference to the southbound movement: At the present time we have cars from each of the stations of Richmond, Portsmouth and Petersburg containing freight not only originating at these points, but which comes to the Seaboard from connections thereat, which moves during the night by train to Henderson or Raleigh, dependent upon whether it arrives on the day of the movement of the local freight train between Henderson and Raleigh, and is then moved by the local train to the intermediate points. The use of the truck service from Henderson will expedite these deliveries from a minimum of four hours to as much as 24 hours. Freight originating at Henderson or any of the intermediate points between Henderson and Raleigh will be picked up by the southbound truck and delivered not later than 10 a. m.

Shipments originating at points south of Henderson and consigned to Raleigh, Hamlet Transfer or points South or West thereof, will be picked up by the northbound afternoon truck arriving at Henderson at 5:00 p. m. and will there be loaded into cars consigned to Raleigh and Hamlet Transfer for rail movement, and this operation will expedite these shipments by 24 hours as compared with the present train service.

Although the use of these trucks for less-carload deliveries at points intermediate between Raleigh and Hender- [fol. 928] son will not materially lessen the number of stops to be made by the local freight train, because there will still remain carload shipments which will have to be delivered or received at these points, the elimination of the loading and unloading of less-carload shipments will avoid a substantial delay now caused by this lcl service and will improve the schedule of the local freight train. This is of particular importance on this route because from Franklinton to Louisburg the train is a mixed one, carrying passengers and U. S. Mail, for which schedules are important. At present, the train is frequently late into Louisburg—on an average, about one hour per day.

Mr. Abeles:

Q. You might explain, Mr. Terrell, whether Louisburg is on the direct route between Henderson and Raleigh?

A. No, sir. Louisburg is on a branch line ten miles from Franklinton.

Q. And the local freight train now operating between Raleigh and Henderson also operates the Louisburg branch?

A. That is correct.

Q. Is it proposed to have the truck do the same thing?

A. Yes, sir.

Q. You have described the primary purpose which the applicants have in mind in establishing this service, Mr. Terrell?

A. I have.

[fol. 929] Q. Will there be any reduction in existing train service, or crews?

A. No, sir.

Q. Resulting from this service?

A. No, sir, there will not.

Q. Mr. Terrell, can you tell us approximately what proportion of the less-carload traffic moved to and from points on this route will be carried partly by rail and partly by truck? Do you understand the question?

A. I think so. Practically all of it.

Q. The major portion of it, at any rate?

A. Yes, sir.

Q. Will there be any expedition in the train movement other than that which you have already described?

A. Well——

Q. Strike that question. I think you have covered that. Mr. Terrell, you stated, I believe, that your train schedule was now only three times a week, is that correct?

A. In each direction; on the main line, it is daily—between Franklinton and Louisburg.

Q. You have a separate operation between Franklinton and Louisburg on the days on which your main line train does not operate?

A. No, sir, the main line train operates into Louisburg in the days it goes north and also on the days it comes south.

[fol. 930] Q. Why have you only three trains a week in each direction on the main line?

A. Because that takes care of the business in this territory without any trouble.

Q. And there is insufficient business in this territory to justify a daily train?

A. That is correct.

Q. Your truck service, however—I believe you stated that there would be two trucks each way per day?

A. Except Sunday, yes.

Mr. Abeles: That is all on direct, Mr. Chairman.

Cross-examination.

By Mr. Watkins:

Q. Did you explain the reason for two trucks southbound from Henderson so near together?

A. The reason for the two, we didn't figure one would take care of all that business, including the Louisburg business.

Q. Is it your idea that these trucks will make all the towns, both of them?

A. Yes, sir.

Q. Why is one of them scheduled 25 minutes faster than the other?

A. We figured if there was not a heavy business for some of the smaller places, we could run a truck that on shorter schedule would not stop there. The other one right ahead of it, would.

[fol. 931] Q. Then you would load these trucks differently for different towns?

A. If the business permitted, yes.

Q. Both of them are going into Louisburg?

A. Yes, sir.

Q. And they would both carry freight between Henderson and Raleigh?

A. Yes, sir.

Q. Are you familiar with the express service in this territory?

A. You mean by rail?

Q. Yes.

A. Yes, sir.

Q. Rail express service?

A. Yes, sir.

Q. What kind of express service do they have over this line?

A. On the main line we have two trains per day which stop at Henderson, Franklinton and Wake Forest. They load and unload express at these points, once each way, a day. In addition to that, we have a local passenger train which handles express in each direction per day, which unloads at the other stations, also at Franklinton, also Wake Forest.

Q. How is Louisburg served?

A. Served by a truck operated by the Railway Express Company.

Q. Between where?

[fol. 932] A. From Franklinton to Louisburg.

Q. Do you know how the express companies', the LCL rates compare with the rail LCL rates?

Mr. Abeles: I have not objected, up to this point. Counsel for protestants is asking questions directed to express service in this territory. We are not, of course, proposing to provide express service on these trucks and I can't see the relevancy of those questions.

Mr. Watkins: The issue, as I understand it in this case is whether or not there is need for additional service in this territory.

Mr. Abeles: Truck freight service.

Mr. Watkins: Any service of transportation, be it by air plane or wheelbarrow; and I think it is necessary to go into the service by all methods that are here available to the public as transportation facilities.

The Chairman: Well, I think the questions about express will not be admitted in this case. The reason the express company carries express on that line is not before us. You can call it freight—because we are all aware of the fact that there is express service on there. I imagine he doesn't know anything about the volume of express.

Mr. Watkins: I am not going into the volume. I was going into the service. He knows that, because the express company uses his trains to carry it on.

[fol. 933] Mr. Abeles: That is quite true, but it is quite a different service from the one we are proposing to render with these trucks, and which we couldn't render under our present application, and with which there could be no possible relationship. He might just as well ask whether there is air plane service between these points.

Mr. Watkins: I think we should, and if it were there, I would put it in the record.

Mr. Abeles: Very well. My objection still remains.
The Chairman: Go ahead and answer the question.
Mr. Abeles: The objection is overruled?
The Chairman: Yes, it is overruled.

By Mr. Watkins:

Q. My question was how does the express company's rates compare with the LCL rail rates?

Mr. Abeles: I again object to that.

The Chairman: That objection is granted. I was proceeding with this theory in the other case, that you were asking him if there was express service there.

Mr. Watkins: I did ask that first. Now I want to show what type service it is. Mr. Terrell would know.

The Chairman: Mr. Terrell is an official of the railroad company, is he?

Mr. Watkins: Yes.

The Chairman: But not of the express company. He can't testify as to the express company.

[fol. 934] Mr. Watkins: Mr. Chairman, the express company is nothing in the world but the creature of the railroad company, and it is part and parcel of the railroad company.

The Chairman: I understand that it is a different organization. I am sorry.

Mr. Watkins: They have set up that hypothetical line between express and LCL freight traffic that nobody has ever been able to find. It is the same freight hauled on the same rates. The only difference is that it is hauled on different trains and gets a different name, and——

Mr. Abeles: And it is of an entirely different character of service.

The Chairman: A separate company handles that, their statistics, the rates and traffic generally. I don't think he is qualified to do that.

By Mr. Watkins:

Q. You don't know anything about the rates?

Mr. Abeles: I objected to that, and I think the objection was sustained.

Mr. Watkins: I asked him if he knows anything about rail rates.

Mr. Abeles: Make your question clear. I have no objection to that.

By Mr. Watkins:

Q. Do you know anything about rail rates?

A. I am not familiar with them at this time.

[fol. 935] Mr. Watkins: Not until you get in another case.

Mr. Abeles: I object to that and ask that it be stricken out.

The Chairman: I don't think an attorney is entitled to speak for the witness.

By Mr. Watkins:

Q. Are you familiar with the points where the merchants at Gill and Kittrell and Franklinton, those points, purchase their commodities generally?

A. I don't know whether I am familiar with it or not, no, sir. I know where some of the shipments move from. I couldn't say what per cent.

Q. Where do they generally move from, into that territory?

A. They move into that territory usually from Richmond and through the steamer connections at Portsmouth, that is, the freight that moves in by rail.

Q. Isn't a good part of their business purchased at Raleigh?

A. Not that that moves in by rail. I don't know what per cent is purchased and moves in otherwise.

Q. You don't have any of it moved in by Raleigh?

A. We have some, but a very small part.

Q. How about Henderson?

A. A very small amount that moves from Henderson by rail. I think Henderson was the last place you asked about.

Q. I believe you testified yesterday in Docket MC 86687, Sub 7, involving proposed operations between Rich-

[fol. 936] mond and Henderson?

A. Yes, sir.

Q. Now, will you please describe how under that proposed operation and this proposed operation, a shipment from Wake Forest to McKinney would move?

Mr. Abeles: Just a moment before you answer that question. You said from Wake Forest to McKinney?

Mr. Watkins: Yes.

Mr. Abeles: I object to that question, Mr. Chairman, on the same grounds that we have consistently objected to efforts by counsel for the protestants to associate separate operations, separate hearings before Boards of the Interstate Commerce Commission, in separate hearings. Now if he wants to ask whether or not there is any such connection or if traffic moving over the route here under consideration will be carried through or over the routes covered by other applications, that is a different matter.

The Chairman: Carried to or from the points.

Mr. Abeles: Yes. It is a broad question he is putting. He is attempting to associate the two entirely together.

The Chairman: I can't see any difference in the effect the answer of one would have on the question, then the other one. I think I will let the witness answer it.

The Witness: A shipment that would be moved from Wake Forest to Henderson by truck operating in that ter- [fol. 937] ritory, moved from Henderson to McKinney, a truck operating between Henderson and Richmond.

Q. I believe you stated you had only tri-weekly service by rail over this line at the present time?

A. I didn't state that. I stated that the local operated that way, if I may explain it.

Q. That would mean local LCL freight would move by railroad into these towns only three days a week?

A. No, sir. It moves six days a week. I can explain that. The day that the local leaves Henderson coming south, the freight at Raleigh is moved by Henderson by through train that night, worked back the next day, the same way the local works in the other direction, and gives daily service.

Q. One day it comes via Henderson and the next day via Raleigh?

A. Yes.

Q. This present service would make it go either way, both ways, four times a day?

A. Well, there would be four trips through there.

Q. And the freight can move southbound out of there by either of two trucks, or northbound by either of two trucks, making the possibility of four movements a day as against the present, of one?

A. Yes.

Q. Did you testify that you would not load any Hen-
[fol. 938] derson freight on this Raleigh truck? Would any freight move between Henderson and Raleigh by motor truck?

A. In some instances, yes. It would not be the original set up.

Q. If you needed it to fill out the truck, you would probably put it on it?

A. To advance rush shipments after the truck had left in the afternoon, I figured we would, yes.

Q. You would use this service between Henderson and Raleigh, if it would expedite the movement of freight?

A. Yes, sir. That was my idea.

Q. And it would be possible to put on other trucks if you needed them, to expedite the service further, would it not?

Mr. Abeles: Do you mean different schedules or on the same schedule?

Mr. Watkins: Either way.

Mr. Abeles: I think that is a question of law. He is asking for a legal conclusion.

Mr. Watkins: I am asking what his intention is in case the traffic increases, or the need for additional service becomes apparent.

Mr. Abeles: You don't mean to ask this witness whether he could do that lawfully?

Mr. Watkins: I am not asking anything about the law. I am asking about his intention.

[fol. 939] Mr. Abeles: I am asking for an interpretation of your question.

Mr. Watkins: I realize what you want.

The Chairman: He is asking for an opinion.

Mr. Watkins: That is correct.

The Witness: It was my understanding that we could not do that.

By Mr. Watkins:

Q. This application is based upon the fact that you do not expect to put on trucks on this highway without further permission from the Interstate Commerce Commission?

A. I can't answer that question, sir. I haven't seen the application.

Q. That is your understanding?

A. That is my understanding, yes.

Q. And at this time you don't think it would interfere with the business of the railroad if such a limitation is placed on the certificate?

A. Not at the present time, no, sir.

Q. Would it interfere with the operations of this truck, these trucks, if your certificate was limited so as to require that the freight that moved on this truck moved part of the way by rail?

(The question is read by the reporter at the request of counsel for applicant.)

[fol. 940] Mr. Abeles: I have no objection, if the witness understands the question.

The Witness: Yes, that would interfere.

By Mr. Watkins:

Q. It would?

A. Yes, sir.

Q. Because you do contemplate the moving of freight between points of this line and points on other lines solely by motor carrier?

A. To the smaller stations where we might withdraw the local train service, there would be no other regular route except this.

Q. When you withdraw this local train service then?

A. Yes.

Q. Putting the trucks in, you must move by the trucks?

A. To mid-stations that are served only by the trucks, insofar as less-carload freight is concerned.

Q. To that extent there would be a lessening of your rail LCL local freight service?

A. No, sir. We would not lessen the service. I have tried to make it plain that applied only insofar as less-carload freight was concerned.

Q. I am speaking only of less-carload.

A. Yes.

Q. To that extent there would be a lessening of your rail LCL local freight service to these points?

[fol. 941] A. Yes.

Q. It would be?

A. Yes.

Mr. Abeles: Do you mean train service?

Mr. Watkins: Yes, I said train service.

By Mr. Watkins:

Q. You haven't given any figures concerning the tonnage moving from and to these points, have you?

A. No, sir.

Q. Do you intend to offer any evidence on that phase, of that nature?

A. I have that information.

Q. I asked you whether you intended to do it—ask your lawyer.

A. I imagine he wants to offer that.

The Witness: He wants to know whether we intend to offer these figures.

Mr. Abeles: I am perfectly willing to furnish any information you want.

Mr. Watkins: I asked the question whether you intend to.

Mr. Abeles: Not unless you wanted them.

Mr. Watkins: This is your case, not mine.

(Discussion off record.)

By Mr. Watkins:

Q. Do you intend to handle freight that originates at Henderson and destined to Wake Forest on this truck?

A. Yes, sir.

[fol. 942] Q. Have you got any intrastate permits from the State of North Carolina to do that?

A. I understand that we have not.

Mr. Abeles: For counsel's information, application is pending before the State Commission.

The Witness: I would like to make one correction in my statement. Mr. Watkins asked me how about the express handled. I said the American Express Company, I believe—I should have said the Railway Express Company. I had the name wrong.

Redirect examination.

By Mr. Abeles:

Q. Mr. Watkins asked you whether it was your intention to carry on this truck any freight from Raleigh to Henderson?

A. Yes.

Q. As I recall, you stated that it was possible. How would such traffic normally be moved?

A. It would normally move in a car by train which is loaded at Raleigh, daily, for Henderson and given points, and move to Henderson during the night by through train.

(Answer is read by the reporter at request of counsel for applicant.)

Q. That is not the local train which operates between Raleigh and Henderson, is it, Mr. Terrell?

A. No, sir, the through train is operated between [fol. 943] Raleigh and Henderson—I mean Raleigh and Richmond.

Q. Now could you explain the exceptional circumstances which would lead you to transport such traffic from Raleigh to Henderson by truck instead of the night through train?

A. Well, as we have not had this service, I just told Mr. Watkins I thought that under some circumstances we would do this, we would have shipments of meat or perishables of some kind that for some reason was delayed and was not loaded in a car for Henderson the night before. Naturally we would like to move that up there in this truck to advance the movement of shipments of that kind.

Q. Now what time must cars moving by this through train be loaded at Raleigh?

A. They must be loaded by 5:30 p. m.

Q. You say 5:30 p. m.?

A. Yes, sir.

Q. And that would arrive at Henderson about what time?

A. Arrive at Henderson around ten o'clock, ten p. m.

Q. Suppose you had a shipment of perishables or other shipment which required expedited movement, delivered for loading after 5:30, would you carry that by the truck leaving Raleigh at one-thirty a. m.?

A. In an exceptional case, we would. But the warehouse would be closed at that time and ordinarily we wouldn't have any such shipments as that.

[fol. 944] Q. Then, except in the rarest instances, you would carry those shipments through by rail?

A. Yes, sir.

Mr. Watkins: That type shipment usually moves by express, does it not?

The Witness: No, sir, we have quite a number of shipments of fresh meat by freight.

Mr. Watkins: Yours wouldn't be a refrigerated truck, you wouldn't use refrigerated trucks?

The Witness: No, sir.

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: The witness many be excused, and we will take an adjournment until one-thirty.

(Witness excused.)

(Whereupon, at twelve-ten o'clock p. m., the hearing adjourned until one-thirty o'clock p. m.)

[fol. 945] Afternoon Session

N. C. Utilities Commission, Raleigh, N. C., June 15, 1937, one-thirty o'clock p. m.

The Chairman: We will come to order, gentlemen. Are you ready to proceed?

Mr. Abeles: I stated at the close of the noon recess that I had finished with Mr. Terrell. I should like to recall him for just a brief moment.

H. M. Terrell testified further as follows (in Sub. 2, MC 86687):

Redirect Examination.

By Mr. Abeles:

Q. Mr. Terrell, have you made an estimate of the cost of operating truck service involved in this proceeding?

A. Yes, sir.

Q. Will you please state what that is?

A. Yes.

Q. First you might state the mileage between the termini.

A. It is 62 miles, counting the distance into and out of Louisburg from Franklinton.

Q. And what is your estimate of the operating cost?

A. Based on 15.3 cents per mile, it would be $37.97 a day for the four trips, approximately $1000 a month.

Q. On what do you base your estimate of 15.3 cents per mile?

A. On the cost of a truck operated between Hamlet and Monroe.

[fol. 946] Q. Has that cost been compiled from recorded expenses, records of expenses incurred in the operation of that truck?

A. Yes, sir. The figures were furnished me from the records at Hamlet.

Q. Do you know by whom those records were prepared?

A. In the Division Auditor's office.

Q. Does that figure include all out of pocket costs such as wages, fuel, repairs and so forth, and depreciation?

A. Yes, sir.

Mr. Watkins: I want to object to that. The witness just testified he did not get the figures up, but they were furnished him by the Division office. Now he is going on further and testifying as to what the figures included, without having gotten them up.

By Mr. Abeles:

Q. I will put the question in this way. Have you a statement furnished by the Division Auditor showing the computation of that cost per mile figure?

Mr. Watkins: That is hearsay.

Mr. Abeles: I think it is common practice, Mr. Chairman.

The Chairman: Have you got the Auditor here who made that?

Mr. Abeles: No. It is common practice, I think.

The Chairman: We will admit it for the present, if it was made by the Auditor and furnished to him. I don't think it is admissible from the standpoint of evidence, if it was made by someone else who can't testify to what is in it, and [fol. 947] who made it.

Mr. Abeles: He can testify as to what the statement shows, what it contains.

The Chairman: Yes, he can do that.

Mr. Watkins: Why don't you put the letter in evidence?

Mr. Abeles: It is not in the form of a letter.

By Mr. Abeles:

Q. Will you now state what the statement shows to be included in the cost per mile which you have just recited?

Mr. Watkins: Did you prepare this statement?

The Witness: No, sir.

Mr. Watkins: I still urge my objection. He didn't prepare the statement. He is testifying as to what the statement includes.

Mr. Abeles: Mr. Chairman, I can produce the witness, if you prefer, under whose direction this statement was prepared.

The Chairman: I think it would be better for you to do that, if you can do it without any great inconvenience. I am not doubting the accuracy of it, but, that would be better.

By Mr. Abeles:

Q. Will you state, Mr. Terrell, that the cost per mile which you have used in estimating the cost of the Henderson-Raleigh truck service is based upon the cost of operating the Hamlet-Monroe truck?

[fol. 948] A. Yes, sir.

The Chairman: You can let it go in, if you have got somebody who can testify who made it.

By Mr. Abeles:

Q. Mr. Terrell, do you think that you can operate the trucks involved in the service here under consideration for not more than 15.3 cents per mile?

A. I haven't had any experience with them. In the figures that I have tried to make, I think that is about what the costs are. I can't say positively.

Q. Are you going to use larger or smaller trucks than those used on the Hamlet-Monroe route?

A. We are figuring on a smaller one.

Q. All the trucks you use will be smaller?

Recross examination.

By Mr. Watkins:

Q. What size trucks do you use between Hamlet and Monroe?

A. As I said, Mr. Watkins, the only thing I have is a statement furnished down there.

Q. You said you were going to use smaller trucks up here. You ought to know what they have got.

A. Three and a half ton truck down there.

Mr. Abeles: Are you willing to accept hearsay testimony on that?

Mr. Watkins: I am testing his knowledge on it.

By Mr. Watkins:

Q. How many feet long is the bed?

[fol. 949] A. I don't know.

Q. What is the horsepower rating of it?

A. I don't know.

Mr. Abeles: Are you speaking of the Hamlet-Monroe truck?

Mr. Watkins: The Hamlet-Monroe truck.

By Mr. Watkins:

Q. What size truck are you going to use on this run?

A. I am figuring on a ton and a half tractor with a 20-foot body, semi-trailer.

Q. Is that a straight truck used down there?

A. That is my understanding.

Q. You are going to use a truck and semi-trailer here?

A. Yes.

(Witness excused.)

R. W. Rogers was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Rogers, state your name, residence and occupation.

A. R. W. Rogers, Division Superintendent, North Carolina Division, Seaboard Air Line Railway, residence, Hamlet, North Carolina.

Q. How long have you been superintendent of that Division?

A. Since September, 1934.

Q. What was your position prior to that time?

[fol. 950] A. For about eight years I had been superintendent of the Georgia Division, with headquarters in Atlanta. Prior to that time, I had been trainmaster and various other positions on the Georgia Division.

Q. You have always been on the operating staff?

A. I have.

Q. And what is the total number of years of your experience in railroad operations?

A. Something more than thirty years. I have been with the Seaboard about 29 and a half years.

Q. Mr. Rogers, you heard Mr. Terrell's testimony, did you not, regarding the basis used by him in estimating the cost of operating the trucks to be used between Henderson and Raleigh?

A. I did.

Q. Did you have prepared under your supervision the statement of the cost of operating the Hamlet-Monroe truck to which he referred?

A. I did.

Q. Is the operation of that truck under your supervision?

A. It is.

Q. Will you state what costs that statement includes?

A. It includes gasoline, lubricants, tires, repairs, miscellaneous supplies, wages of the driver, licenses, insurance, taxes, depreciation, interest on the investment.

Q. The latter item at what rate?

[fol. 951] A. We figured on this operation the actual life of a truck——

Q. I am speaking of interest on the investment.

A. Six per cent.

Q. As far as your depreciation item is concerned, what period do those costs include?

A. The period of 56 months.

Q. Was the truck in operation at the time the figures were computed?

A. The period that this covers was the actual life of the truck from the day that it was put in service until the approximate date it was retired.

Q. Does the depreciation you have used include the salvage value of that truck?

A. It does.

Q. You have heard Mr. Terrell's testimony as to the size of the trucks which he would use. Are those trucks larger or smaller than the truck operated on the Hamlet-Monroe line?

A. Smaller.

Q. From your experience can you state whether it is more or less expensive—or, from your experience, can you state what relationship the size of a truck bears to the cost of operation?

A. The heavier the machine——

Q. I am speaking now of per mile costs, of course.

[fol. 952] A. The heavier the machine, the higher the cost per mile.

Q. Have you stated the cost per mile developed by that statement?

A. I have not.

Q. Well, will you do so, please?

A. 15.2 cents per mile, slightly plus.

Q. That includes the total mileage operated by the truck during its entire life?

A. That is right, it does.

Mr. Watkins: That is all. Just a minute—I do have another question.

By Mr. Watkins:

Q. That represents the expense of one truck?

A. Expense of one truck over a period of 56 months.

Q. The same truck?

A. The same truck.

Q. It is a straight truck?

A. No, it is a semi-trailer.

Q. What type?

A. General Motors.

Q. GMC truck and trailer?

A. Yes.

Mr. Abeles: I am now calling upon Mr. Rogers to testify——

(Discussion off the record.)

Mr. Abeles: The testimony which will follow from Mr. Rogers is general testimony applicable to all of the cases [fol. 953] covered by Docket MC 86687, sub. Nos. 2, 4, 5, and 6.

The Chairman: That is sub. Nos. 4, 5, and 6, consolidated with No. 2?

Mr. Abeles: Yes.

(General Testimony)

R. W. Rogers having been sworn, testified as follows:

Direct examination.

By Mr. Abeles:

Q. If in this and the other proceedings mentioned, the testimony purports to show that there is ample truck service now in operation between the points involved, and the suggestion is made that the applicant here could profitably and efficiently utilize such independent truck services for the purposes which they are seeking to accomplish through the establishment of coordinated motor and rail transportation service, what would be your observation in response to that suggestion?

A. That would be thoroughly inimical to the railroad's interests.

Q. Would it be a practical suggestion?

A. It would not.

Q. Will you explain why?

A. Well, in the first place the railroad would have to short-haul itself on a considerable volume of business, [fol. 954] to its own local stations.

Q. Go ahead.

A. No transportation agency that I know of, not even a truck, ever deliberately and willingly does that. For instance, Spencer Transfer on the Southern Railroad loads a merchandise car of LCL freight to break bulk at the Seaboard Warehouse at Charlotte for distribution through-

out the stations on the Seaboard Air Line Railway, local stations. Some of that——

Q. Between what points?

A. All points in the vicinity of Charlotte, from Charlotte to Rutherfordton, Charlotte to Hamlet, and even beyond. Now if we undertook to coordinate our service in turn with the trucking companies, and turned this business over to them at Charlotte, we would have the warehouse expense of handling this business at Charlotte, but we would give up all of our revenue on that that would be served by the truck lines. For instance, if the Southern in this case had a shipment destined to Monroe, North Carolina, under a coordinated plan this business might have to be turned over to the trucking company at Charlotte. We would give up all of our revenue, but still have the warehouse and terminal expense in Charlotte. Again, particularly on this Monroe-Rutherfordton line, there is a larger volume of station to station business than at any other points on my Division. For instance, Charlotte is a shopping center and originates business for some of these local stations. If we coordinated with the trucks, we would simply go out of the [fol. 955] merchandising business between Charlotte and those local stations.

Mr. Watkins: He is testifying about intrastate movement now between Charlotte and those points.

Mr. Abeles: Not necessarily.

Mr. Watkins: He is speaking about merchandise purchased at Charlotte for distribution on that line.

The Chairman: He is just giving that as an illustration, I think. He could probably make it apply to interstate as well as intrastate.

The Witness: I used the Spencer Transfer case as a typical case of what happened, because the Spencer Transfer business is largely through business that originates at a distance, such traffic centers as Cincinnati, Chicago, as well as eastern points.

The Chairman: That, of course, would be interstate movement?

The Witness: That is correct.

The Chairman: Proceed.

The Witness: The second reason would be that such an interchange arrangement would create a tremendous volume of accounting. As an illustration of that, we have a mer-

chandise package car from Chicago to Hamlet. In that car, breaking bulk at Hamlet Transfer, will be business for points intermediate between Hamlet and Monroe. If we [fol. 956] turn that over to the trucking line, you have a very peculiar problem there of what earnings or how would you deal with this small back-haul from Hamlet to the intermediate point over which the merchandise car had already traveled. There would be many illustrations of that kind.

Again, you would create a considerable additional accounting on your division of your freight claims, as well as on division of your freight rates.

Another important operating feature is that we would lose to a large degree our control over the flexibility of service. Unless these trucks were exclusively under our supervision, the railroad supervision, they could not control the schedule of arrival and departure. They could not satisfactorily and definitely coordinate the truck service with the rail movement, and we would defeat to a large extent the very purpose that we are trying to accomplish.

Another thing is that we would not have the close supervision over the character of service that these companies would render on business in which we would be interested, to our own local stations. We would not be able to supervise them, check the character of the service, or even take the disciplinary action we would with our own employees in case they fell short of a class of service we felt should be rendered.

Again, we feel it would open up our waybills and business [fol. 957] to local stations on our line, to a competing carrier, that would give an excellent opportunity for some strong adverse solicitation.

By Mr. Abeles:

Q. How would the cost of interchange between the rail line and the truck line, independent truck line, compare with the transfer between the rail line and its own operated truck service?

A. Well, that comes back to the question of control of service. With our own trucks and our own service, we could coordinate, with our rail schedules.

Q. I am not speaking now of the coordination feature, but the actual cost of the operation, of interchanging with the

trucks as compared with the transfer between our rail car and our operated trucks.

A. That is what I was trying to explain. On our own trucks, we can conform to or establish service without any extra expense other than the expense that would be incident to the operation of the rail cars, working them; but if with the private carriers we could not control their arrival and departure, we might be faced with two expenses, one station expense of handling the work in the merchandise car and at a later hour with other forces having to check to the outside carrier.

Q. Did you say check to the outside carrier?

A. Deliver to the outside carrier. Just how that would [fol. 958] compare, I just don't know.

Q. Where we transfer it from our rail car to our own operated truck line, do we have to check the contents of the shipment?

A. We do not. For instance, under a coordinated rail and Seaboard truck, we load the merchandise cars to what we term break bulk points. The truck opens those cars and loads its own freight. That is a Seaboard employee. We would not have to have any supervision there to arrange an interchange.

Again, on the truck passing a station at the time when—and I am speaking of the small one-man stations and no agency force on duty, he opens the warehouse, puts his inbound freight in the warehouse and loads the outbound freight without the necessity of having to have an agency force on hand to check; but if it was an outside independent trucking company, we would have to have, of course, some one on there to check and deliver this freight.

Q. That would be true at every interchange point?

A. That would be true at every station where this independent truck served.

Q. Mr. Rogers, if we were compelled to utilize independent truck services which is the underlying basis of our applications here, in your opinion will we ever undertake it?

A. We would not.

Mr. Abeles: That is all.

Mr. Watkins: Is that all of the testifying he is going to do?

[fol. 959] Mr. Abeles: Oh, no—on this general.

Mr. Watkins: I will reserve cross-examination. I have no questions at this time.

Mr. Abeles: I think that is contrary to the understanding that we had at the outset. Mr. Rogers will testify specifically upon the issues of public convenience and necessity in the proceedings which will follow, but this testimony is general and applies to all the cases which follow; and I think under the understanding and the ruling of the Examiner, the Chairman, I mean, when the cases were consolidated, the cross-examination on specific topics must follow immediately upon the direct examination.

The Chairman: Well, I'll tell you why I ruled that way. I will explain that to you. I did it in the interest of specific witnesses with reference to public convenience and necessity in the several cases. Now, I don't know that that is important in a general witness. That was the statement I made a while ago, where one witness is testifying with reference to a particular case. I think it is important that that evidence be consolidated, but as a general witness——

Mr. Abeles: May I interject a remark, that this witness' testimony on this particular subject, while it is true it applies generally to all cases, it differs entirely in its purpose and function from the testimony which he will give upon the issue of public convenience and necessity. And the rea- [fol. 960] son that I am urging that cross-examination on the testimony which he has just given be made now, is to avoid the confusion in the record which would result from the splitting of the cross-examination on this special subject, and placing it at a later point in the record. In other words, the reasons are identically the same as those which lead the Chairman to rule that cross-examination on specific testimony on the subject of public convenience and necessity should follow immediately upon the direct examination.

The Chairman: I think if these cases were being heard separately, of course it would have a different bearing on it, and to treat the testimony the way you propose, of course helps us to keep the separate entities of the cases as they are filed. I realize that that is true.

Mr. Watkins: Here is my whole objection to proceeding in this way, that is, I know exactly what is going to happen if I fail to ask a question now concerning this little segment

of Mr. Rogers' testimony and attempt at a later time in the case to ask a question involved in that. Mr. Abeles is going to object. What I would like to do is wait until Mr. Rogers has completed all of his testimony, then I will ask all the questions dealing with all of it, but won't be prejudicing myself by saying when I finish the cross-examination on this point that I will never hereafter refer to that again in cross-examination.

[fol. 961] Mr. Abeles: That position is no more prejudicial to you than the position in which I am placed by releasing this witness on this subject. I am not reserving the right to question this witness or any other witness on this particular subject again. I am closing my testimony on that. I am asking you to complete your cross-examination on this specific subject.

The Chairman: I am going to rule with the petitioner; in this case, you will have to proceed with the cross-examination.

Mr. Watkins: May I note an exception?

The Chairman: Yes.

Cross-examination.

By Mr. Watkins:

Q. You used some large word like inimical.

A. Inimical.

Q. Will you describe the difficulties you would have in dealing with independent truck lines? One of those you said was the question of the proration of rates, of the through rate. Could there be any difference in the difficulty of prorating the through rate through interchanging with a truck line and interchanging with another rail carrier?

A. Yes, because the same conditions do not exist.

Q. And they differ, how?

[fol. 962] A. We do not have any short-hauling of ourselves——

Q. I am talking now simply as to the question of the proration of the rates. That was one of the points you made.

A. Yes, I think there will be.

Q. How?

A. Because of the multiplicity of trucking lines.

Q. No one is suggesting that you interchange with hundreds of them, are they? Did you pick out just one?

A. No. There is no one trucking line that would cover any part of this territory, in toto.

Q. Are you sure of that?

A. To the best of my knowledge.

Q. Assuming that a truck line would cover a complete segment, one truck line, and you only had to interchange with one to accomplish it, would there be any difficulty in prorating the rate as with a railroad?

A. Yes. There is already an established system of rates and divisions among all of the rail lines. The waybills are reported, there is a system of accounting that has grown up over a long period of years in which the delivering line is held accountable.

Q. Are you talking about the prorating of the rates?

A. I am talking about that, and sending, with settling all previous accounts. If we turn over our business to an independent truck line, that trucking line would have to settle [fol. 963] exclusively with the Seaboard, and we would be responsible to all of the previous rail carriers for getting their money out of the trucking line. Whereas, if the railroad handled it, each railroad looks to the delivering carrier, but each railroad here would not look to the trucker, because they would have no part in the arrangement.

Q. Why could not the same rules be made applicable to a motor carrier?

A. Because there are so many motor carriers, separate motor carriers in existence.

Q. We were assuming you were only going to interchange with one in each division.

A. Of course, if there was only one carrier, one motor carrier handling exclusively for the North Carolina Division, that would simplify it.

Q. And if it was under the same rules and regulations, it would be the same thing?

A. If all of the carriers interested in the through waybills were agreeable, yes.

Q. And the same would be true as far as claims are concerned, if the rules were made applicable to motor carriers dealing with the railroad?

A. It would be the same thing, except unless you were dealing exclusively with one interchange, with one single trucking line, you would still have a multiplicity of trucking lines to deal with.

[fol 964] Q. My question was based on the assumption that there was one trucking line. You don't know anything about it?

A. No.

Q. Do you know of any provision of the Motor Carrier Act that requires a motor carrier to operate on a particular schedule?

A. I am not thoroughly versed in the Motor Carrier Act, but it is my understanding that your schedules are published and you adhere to them; of course, which we undertake to do.

Q. Have you ever seen a published truck schedule?

A. No.

Q. If it were so that the motor carrier could operate a truck at any time of day or night, out of any given point, would it be any more difficult in coordinating that with your existing rail schedules, than a truck line controlled by your railroad?

A. Yes.

Q. What?

A. Because the railroad would have the final say as to when that truck would operate, as long as it was a company owned machine; but with a private line carrier, you would have to have a mutual understanding and agreement with the private line carrier. And instead of being a matter for the exclusive decision of the railroad, it would still remain rather a matter for mutual understanding.

[fol. 965] Q. Is a truck line agreed to operate a truck from Henderson to Raleigh, leaving Henderson at 6:00 a.m. in the morning, arriving at Raleigh at 10:00 a.m. in the morning, and other schedules on that route, would there be any difficulty as far as schedules in interchanging with them rather than your own line?

(The question is read by the reporter.)

A. None, insofar as schedules, provided that was the schedule that suited the railroad's requirement.

Q. The schedule that I read is on your application MC 86687, Sub. 2.

A. There would still exist, however, the objections other than the operating features, that I have already mentioned.

Q. We are taking them up one by one. We know that you have got a lot of them. Now when these cars come into

your terminal, and it is transferred from that car to a truck line—to a truck, would the freight be handled over your platform?

A. As a general proposition, yes. There may be at times direct transfer from box car to box car at intermediate points, but if the transfer point is in the terminal, as a general proposition the transfer would be across the platform.

Q. Now, speaking of a transfer from rail car to truck, would that be across the platform at the points covered by these eight applications?

[fol. 966] A. In some cases it would direct from a car to the truck, at the terminals.

Q. Where would those be?

A. At some of the set-out points. For instance, at Lumberton, Wadesboro, Rockingham, to intermediate set-out points.

Q. If the independent truck line backed its truck up to the car, or to the platform, whichever service you are using at that point, would there be any difference in the cost of transfer to an independent truck line and to your own truck line?

A. Oh, yes.

Q. What?

A. Oh, I didn't hear your question—you said something I didn't hear what it was. The question would be in dealing with outside agencies of any kind, we must have a check of the freight that we deliver, just as we would to a consignee.

Q. You check the freight going onto one of these trucks?

A. No, sir, not on our own checks.

Q. You would not check it at the transfer point to determine whether it was there or not?

A. We check it, of course, into the car at the transfer point.

Q. You would not check it out of the car onto the truck?

A. At intermediate points, no, sir.

Mr. Abeles: What points?

The Witness: The intermediate break bulk points that [fol. 967] I mentioned a few minutes ago.

By Mr. Watkins:

Q. If you had an independent trucking company they would be responsible then, would they not?

A. Yes, we would certainly hope so.

Q. Then you would be protected?

A. No, there would always be a question of dispute as between the two companies, in case of any shortage or damage or claims.

Q. Not if you got a receipt for it?

A. You wouldn't get a receipt when there was no agency force on duty and the man was handling his own stuff.

Mr. Watkins: I think that is all.

Redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, in connection with the inquiries of Mr. Watkins relating to the division of rates between a rail carrier and an independent truck line, it is true, is it not, that such divisions as would be made with such independent truck lines would cover service between points both of which were on the rail line?

A. Both local to the railroad.

Q. Both local to the railroad?

A. Yes.

Q. Now, I am going to refer now to a specific example. For instance, the route of rail operations, say from Charlotte to Rutherfordton. The Seaboard has a direct rail [fol. 968] route between those two points, has it not?

A. It has.

Q. Would it be possible, physically possible, for freight between those two points to be routed by the Seaboard from Charlotte to Shelby, there interchanged with the Southern Railway and transported by the Southern from Shelby to Rutherfordton?

A. It would.

Q. In such instance, do you know whether—in this instance and other like instances, of service between two points local to the same railroad, but between which it is physically possible to interchange with another railroad, does the rail carrier serving both points ever publish through rates in connection with the other rail carrier?

A. I have never heard of it being done.

Q. Is that tantamount to what the truck lines are now suggesting with reference to division of rates?

A. That is exactly my understanding of it.

Mr. Abeles: That is all.

Recross examination.

By Mr. Watkins:

Q. Does the Seaboard Air Line Railway publish rates into Charlotte, North Carolina, on connection with the P & N Railroad?

A. We interchange with the P & N through different interchange points. We do not publish through rates inter- [fol. 969] changing with the P & N at Charlotte. We do publish through rates interchaning with the P & N, and Pinoca.

Q. Shipments, in some instances, could either move all the way by P & N into Charlotte?

A. Under certain conditions, to certain consignees, a general proposition, yes.

Mr. Abeles: But where the point of origin and destination is directly served by the Seaboard, over a comparatively short distance, do you know whether we publish such rates in conjunction with another physically possible route?

The Witness: None that I know of.

Mr. Abeles: I wish to state that his (Witness Rogers') first testimony was in connection with Sub. 2.

(Witness excused.)

Mr. Abeles: I wish to call Mr. Stanley. This is general testimony, too.

The Chairman: All right.

W. L. Stanley was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Your name is W. L. Stanley?

A. Yes.

Mr. Abeles: I am calling Mr. Stanley for the purpose of offering general testimony applicable to the proceedings in Docket Mc 86687, Sub. Nos. 2, 4, 5, and 6.

[fol. 970] Q. Will you state your residence and occupation with the receivers and the corporation?

A. W. L. Stanley, Residence, Atlanta, Georgia, Vice-President of the Seaboard Air Line Railway Company, and Chief Public Relations Officer for the Receivers of that Company.

Q. Mr. Stanley, are you the official who has been closely associated with and responsible for the development of the motor carrier service performed by the Railway and its receivers auxiliary to its rail service?

A. I have perhaps been in closer touch with it than any one else. In developing this service, of course I have been subject to the directions of our receivers and have worked out these various plans in cooperation with other officers of the railroad.

Q. Then you are familiar with the general plan, policy and purpose of the railroad and its receivers in establishing these auxiliary services?

A. I am.

Q. Now, will you state in your own words what the plan, purpose and policy are?

A. For quite a while we have been studying the subject of coordinated rail and truck operations. That study proceeded from the theory that today, by land, there are three forms of transportation. One solely by rail, another solely by motor vehicle over the highways, and the third, a combi- [fol. 971] nation of rail and highway service, which in our opinion can only be rendered by the railroad. The purpose of the study and of the plans that we have developed, have been to coordinate rail and truck service. That is, in a very large degree to handle freight entrusted to us by the public, partly by rail and partly by truck.

In all of these operations which we propose, the major part of the business what we will do will be that that is handled partly by rail and partly by truck. Some of it, of course, will be exclusively by truck. We believe that under that plan we can speed up the traffic which the public gives us, and of course as a common carrier, we must accept and carry everything that is offered, and can refuse to carry nothing, provided the shipment complies with our rules and regulations.

We have all over the railroad and in this particular territory, large shipping points and stations at which freight is received from connecting lines, originating at various points in the United States.

I might illustrate that by saying that at Richmond, Virginia, we receive not only the freight that originates at Richmond, but also freight that comes to us through the Chesapeake and Ohio Railroad, from the Norfolk & Western, and from the Richmond, Fredericksburg and Potomac Rail- [fol. 972] road, from the east, Philadelphia, New York, and other eastern cities. At Hamlet Transfer, located in North Carolina, we have cars loaded by other railroads that come through the Birmingham Gateway from the west. They come from Portsmouth, Virginia, where we receive it from boat lines. That originates in Florida and all over the country; as a rule, at those transfer points, that freight, carload of freight, which I have just described, or those carloads of freight which I have just described, in railroad parlance, break bulk and they are distributed in cars that are destined to various points, some contiguous to the transfer stations and other remote from the transfer station.

Now, it was our theory that by handling that freight, which represents the major portion of our business, partly by rail and partly by truck, to destinations, that we could greatly expedite our service and that that would result in a benefit to the public. In addition to that, this scheme makes possible other economies in railroad service. As a rule, the local freight trains are operated to handle less than carload shipments from station to station. And at point of destination or at the point of origin, the freight is unloaded from the cars, or loaded into the cars by these local trains. That is part of the work of the local trains. In addition to that, they have carload business to set out at the smaller stations. They have industrial plants to switch, [fol. 973] and insofar as we are able to take from them the handling of LCL freight, the loading and unloading of it, the more time that they have to devote to the switching of industries, and to other work that they have to perform, thus expediting the movement of through cars. It has been the custom of the railroads for a great many years, as a rule, to operate their local freight trains in the daytime, under this scheme, and if these trains are relieved from the handling of less than carload business at the various stations, they can in many instances be operated at night, thus insuring the switching of industrial plants at times most convenient to the operators of them, and in picking up in a great many cases, carload business after

the close of the day's work at those industrial plants and expediting the movements of those shipments. That, generally, is the purpose that we have been seeking to attain.

Q. And are all or some of those purposes to be realized in all of the applications which are now before the Board in these consolidated proceedings?

A. Some or all of them, in practically every one of them.

Q. Mr. Stanley, I wish you would describe the experience which the Seaboard has had in the operation of auxiliary motor truck service heretofore?

A. The first service that the Seaboard established, as I recall it, for the handling of less than carload freight, [fol. 974] was about five years ago, between Hamlet, North Carolina, and Monroe, North Carolina, a distance, I believe, of about 54 miles. Subsequently—I am not sure that I state all of these in chronological order—subsequently, on January 1, 1935, we put on a service between Morriston, Florida, and Waldo, Florida. And at the same time one between Tampa, Florida, and Brooksville, Florida. Then we inaugurated a service between Drifton, Florida, and Monticello, Florida, a distance of four miles, paralleling a branch line railroad which we have between those two points. Then we put on one between Fernandino and Yulie, paralleling another branch line for about 12 miles, both of those points being in Florida. Then we established a service between Jacksonville, Florida, and Wildwood, Florida, and subsequently extended that from Wildwood to Tampa. Then the last service that I recall that we inaugurated about a year ago was between Rhine and Lyons, Georgia, a distance, I think, of 55 miles. The total truck service embraced in all of those operations which I have enumerated is 450 miles. That involves an experience of approximately five years.

Q. An experience of approximately five years, then, in the operation of this type of service, does it not?

A. Yes.

Q. Have the operations which you have just enumerated proven satisfactory for the purposes for which they were intended?

[fol. 975] A. Absolutely, and especially in the expediting of the movement of less than carload freight and carload freight to and from smaller stations.

Q. Are all of the truck operations which you have mentioned still in service?

A. Yes.

Q. Have any truck operations once instituted by the Seaboard ever been withdraw-, to your knowledge?

A. None that were inaugurated for the handling of freight. I think—well, as I recall it, during the time when we had a very few passenger trains, in order to relieve passenger trains stopping at smaller stations for handling mail and express, we did have on a truck from Norlina, North Carolina, to Hamlet, North Carolina.

Q. That is no longer in service?

A. I don't think so. It may be partly in service, but I don't recall it.

Q. Mr. Stanley, I am handing you the annual report of the Seaboard Air Line and its receivers, for the fiscal year ending December 31, 1936, will you state the railway operating revenues, the net railway operating income and the gross income shown on the income account on page three of that report?

A. The railway operating revenues for the year 1936, Seaboard System, were $38,346,055.37. The net railway [fol. 976] operating income, which is the sum remaining after the payment of operating expenses and taxes, was $2,920,582.99. The gross income for that year was $3,276,751.23.

Q. Is there any doubt, from what you have just recited, of the financial ability of the applicant here to perform the truck services which are proposed?

A. No, as is shown by these figures for 1936, we would have three and a quarter million dollars available for that purpose.

Q. From your experience, Mr. Stanley, do you feel that the truck services proposed by the Seaboard in these proceedings, will justify itself financially. And in answering that question, I should like to have you include in your answer your views as to the effect of these proposed services upon additional traffic which may or may not be derived from such services?

A. I haven't the slightest doubt, based upon observation and my study of this matter, but that these operations will be self-sustaining and add to the net operating revenue of the railroad. Of course, we hope that in addition

to the economies that will be effected, that this improved service of ours will attract to the rails additional business, and some of that which has been taken away from us by our competitors, highway independent trucks, in recent years. It is also my personal opinion that this will have [fol. 977] a tendency to some degree at least, to cause merchants who are now using their own trucks to abandon that use and to return to the rails, assuming, of course, that we can, as we hope and believe we will do, give to them a service that is equal to that which they are now obtaining by the use of their own trucks.

Q. Mr. Stanley, is it possible to show statistically in advance of actual experience the result in terms of net railway operating income of the operations of trucks over any specified route?

A. No, I don't think that it will be possible in advance, and very difficult to do it even after you have had the service in effect, for the reason that under our theory of this operation, this truck is simply an instrumentality of the railroad. Insofar as our operation is concerned, this is a railroad operation. These trucks are just the same as a locomotive or a car. Therefore, we keep our records and our accounts without undertaking to separate the revenue that would come from the truck, because after all, what we accomplish by their use will be reflected in one figure, namely, the net railway operating income of the property.

Q. And that figure embraces, I understand you to mean, all revenue and all expenses involved in the operation of both rail and truck lines?

[fol. 978] A. In other words, this statement that I just read to you here shows railway operating expenses for 1936, of $31,820,609.33. In that is included the cost of operating these trucks that I have referred to in my previous testimony, but there is no detail of that operation.

Q. I wish now you would refer to the suggestion that has been made of record in the cross-examination of witnesses, that we limit our application in these cases to the authority to transport in our trucks only traffic which has either theretofore or will thereafter receive rail transportation.

A. That would be absolutely impossible, unless by such an agreement we wanted to destroy the use of this facility which we are seeking authority to inaugurate. It would

be physically impossible. I will take this in illustration: The operation of a truck between Raleigh and Henderson. I think that is about 62 miles, and I am assuming that there is a shipment going first from Raleigh to Neuse, which is the first station north of here, north of Raleigh. How it will be possible to handle that shipment partly by rail and partly by truck, I can't conceive. I will take another instance, a shipment moving from Neuse to Franklinton. Now, if you would handle that shipment partly by rail and partly by truck, the railroad movement would be between two points, I don't know what points, and you would absolutely destroy the effectiveness of this operation and make it necessary to maintain both local freight [fol. 979] and truck service, a thing which we are trying to avoid so far as the movement of LCL freight is concerned.

Cross-examination.

By Mr. Watkins:

Q. Is it not the policy of the Seaboard Air Line Railway to parallel its rail service, all of its rail service with motor carrier service?

A. It is not.

Q. To what extent are you not going to do it?

A. I can answer that question by telling you that up to the present time, we have studied individual geographical situations to see what we can do by coordinating rail and truck service, and that at no time have we ever considered the proposition of paralleling the entire railroad with truck service, and I might say, Mr. Watkins, that in my opinion that will never happen.

Q. Mr. Stanley, you have no- pending before the Interstate Commerce Commission, eight applications, have you not?

A. I believe it is seven or eight.

Q. And those were prepared by you, were they not?

A. I prepared the applications, yes.

Q. And those applications in effect establish motor carrier service from Richmond, Virginia, to the South Carolina-Georgia line, and from Wilmington, North Carolina, to Rutherfordton, North Carolina, is that not true?

A. Considering them as a whole, that is true. Considering them in respect to their physical operation, it is not true.

[fol. 980] Q. But you are unwilling to have it stipulated in any of these applications that freight not be handled between any of those points except partly by rail and partly by motor carrier?

A. I am not willing that that be done, because I can conceive of instances, comparatively few, where it would be desirable to transfer freight from one truck service to another truck service.

Q. And wherever it is more expeditious or economical, you will do that?

A. I think so, yes.

Q. Thus, under these unlimited certificates, it would be possible to handle shipments from Richmond, Virginia, to Columbia, South Carolina, entirely by truck?

A. It would be possible, but hardly conceivable.

Q. And it would be possible to handle shipments between Richmond, Henderson, Raleigh, Wilmington, Hamlet, Monroe, Charlotte, Columbia, Rutherfordton, and Shelby?

A. In some instances it would be physically possible to do that, but the reason that that would not be adopted as a practice, is the fact that there is no form of transportation of which I have knowledge that is as cheap as rail transportation, provided you have the amount of business that will justify the operation of rail service. To go one step further, we would be perfectly foolish to handle a shipment by truck from Richmond, Virginia, to Columbia, [fol. 981] South Carolina, when we have a car moving in a through tonnage train between those points daily.

Q. Have you intrastate rights over all the routes which you are asking for interstate rights over?

A. Here?

Q. Yes.

A. No, sir, we have not yet secured them. I mean, you are speaking now in North Carolina.

Q. I am speaking of these four applications you are testifying about.

A. No, we have not yet obtained intrastate rights. We have filed application for them.

Q. Would you be willing to inaugurate these proposed services for handling interstate freight, only?

A. I don't know what we might do. My judgment would be that in order to make the service effective in the public

interest, it would be necessary to have authority to handle both classes of business, although in nearly every case that we have here, the majority of the freight that will be handled is interstate freight.

Q. But if such did occur, it would be necessary for you to classify your freight as to the type before you put it on the bill?

A. If we had no intrastate authority, we couldn't handle intrastate freight, that is all.

[fol. 982] Q. Now, what date did you start this service between Rhine and Lyons, Georgia?

A. What date?

Q. Yes.

A. As I recall it, Mr. Watkins, it was in the early summer of 1936, around about that time.

Q. Since June 1, 1935?

A. I may be wrong, it may be two years. As I get older, time goes faster. You may be right. It may be two years.

Q. Do you think it was before or after June 1, 1935?

A. If you say it was June 1, 1935, I will accept it. I have not looked it up.

Q. Mr. Stanley, I don't know as much about the Seaboard Air Line as you do. I am relying on you.

A. My recollection was that it was about a year ago. I may be wrong. It may be two years ago.

Q. Do you know whether you are handling interstate freight on that line?

A. We are.

Q. And you have not filed application with the Commission?

A. We registered that certificate.

Q. You stated that you had not kept any separate account for your motor carrier operation?

A. Correct.

Q. Then you are not prepared to testify as to whether [fol. 983] or not the motor carrier operations which you have put into service in the past or which you propose to put into service here have proven a profitable adventure?

A. Yes, I can testify that they have proven profitable, without being able to give you specific figures, because taking Rhine and Lyons, Georgia, that you just referred

to, I know that our business from Macon, and from Savannah, Georgia, has been increased as a result of that operation.

Q. And you attribute it to that operation?

A. To nothing else.

Q. Where did that traffic increase, that business?

A. Sir?

Q. Where was that traffic increased, that Georgia, diverted from?

A. It came from Macon, Georgia and Savannah, Georgia, I mean the rail movements were from those two points as far as the Seaboard was concerned.

Q. From what transportation agency was that increased tonnage diverted?

A. I have not the slightest idea. I know our business was increased.

Q. Do you know that was tonnage diverted from some other movement?

A. It may have been a private movement.

Q. Do you know of any merchant who has taken off his [fol. 984] private truck along the line you have established this coordinated service?

A. I don't recall the name of any at the moment.

Q. Do you recall the fact that any have done so?

A. No. If I knew the fact, I would know who the name was.

Q. But you do know that this service has caused additional traffic to move over your lines?

A. I know that it has increased our revenue between Rhine and Lyons, Georgia. I know personally that it has increased our business between Morriston, Florida, and Waldo, Florida, for the reason that, especially on fruits and vegetables moving from that territory, we are now able by truck to handle the traffic to Waldo, and there put it into a fast train, and expedite it by 24 hours, as compared to the service we formerly gave.

Q. There has been a general increase in all transportation business since January 1, 1935, has there not?

A. The swing has been upward.

Q. And has the swing on these lines where you have established this transportation been upward, greater than on the other branches of the railroad?

A. Yes, I think so.

Q. You think that the increase on your Rhine and Lyons division was greater than your increase on any other division?

A. No, I used that as illustrative; it may have been just [fol. 985] as great on the other lines, but I happen to have personal knowledge of what had occurred there.

Q. The Seaboard Air Line Railroad is a part owner of the Railway Agency, is it not?

A. It owns a very small amount of the stock.

Q. And you have an operating agreement with the Railway Express Agency, have you not?

A. Yes, sir.

Mr. Abeles: I have not the slightest objection to this type of questioning except for the fact that I can see no possible relevancy to the issues here involved, of any operations in express service, Mr. Chairman; and for the sake of excluding from the record extraneous matter, I object.

The Chairman: I ruled previously that the express operations on the line, to show that, is all right; but I don't think that the railroad officials are qualified to testify with reference to anything else about it.

By Mr. Watkins:

Q. You handle Railway Express business over all your lines, do you not?

A. Well, I won't say that we handle it over all our lines. I will answer your question by saying that we handle it practically over all our lines. There may be some isolated cases where we don't handle express.

Q. Generally speaking, the railroads, through the joint ownership of the express companies, maintain express [fol. 986] service over all of the lines of those railroads?

A. Yes, sir.

Q. And that express service moves in passenger trains?

A. Yes, sir.

Q. And generally speaking, that is more expeditious than service by LCL freight service?

A. That difference in the time of the movement is what differentiates the two services, except I think that you must remember I am not a rate expert—I think that express rates are, as a rule, higher than freight rates.

Q. Are they, or haven't the express companies published the same rates on LCL business as the rails have?

Mr. Abeles: I think that the questions are going beyond the scope of the Commission. I object.

The Chairman: The objection is sustained.

Mr. Watkins: This gentleman has been in the transportation field longer than any man I have ever had the privilege of talking to. He has been competing with truck lines, express companies, and air planes, and everything else, and if he doesn't know the general conditions in the transportation business, I don't know who does. And this case has in issue here the question of whether or not the present facilities for transportation are sufficient or not and unless we can go in and show the extent of the express service, I don't think the record will be complete.

[fol. 987] The Chairman: I don't think he is competent to testify with reference to that.

Mr. Watkins: He testified himself that he thought the express rates were higher.

Mr. Abeles: Yes, only because I didn't object.

Mr. Watkins: He volunteered that.

Mr. Abeles: I am objecting to your pursuing that line of inqury farther.

Mr. Watkins: May I note an objection?

The Chairman: Yes, sir. Objections sustained.

Mr. Watkins: That is all.

Redirect examination.

By Mr. Abeles:

Q. One more question, Mr. Stanley. In your direct testimony, I neglected to ask you whether in the operations now conducted by the Seaboard Air Line and its receivers, and in the operations here proposed, is it the purpose of the railway to serve any stations other than those served by the rail lines?

A. Only those communities that are served today by our rail lines.

Q. If by chance the truck route traversed communities not served by rail, what would we do?

A. In the first place, in every instance, we almost parallel our railroads with our truck operations. In the second place, if we should get by highway away from the

[fol. 988] rail lines, we do not intend nor do we seek to serve communities that are not on our rail lines.

Mr. Abeles: That is all

The Chairman: Mr. Stanley, I have read here in the application the order of the Court appointing the receivers, giving them authority to go ahead with the operations. Is there a specific order of the Court authorizing such operations as we have before us, or would it be necessary to obtain additional information, I mean additional authority from the Court to do so?

The Witness: Mr. Commissioner, there is no order of the Court authorizing us to apply for or engage in this truck service. Answering your question further, it is my opinion that the general order of the Court directing the receivers to operate and conserve the property is broad enough to authorize them to do anything that may be necessary, in their opinion, in that connection.

Mr. Watkins: I overlooked one question.

The Chairman: Yes.

Recross-examination.

By Mr. Watkins:

Q. You are familiar with the Motor Carrier act of 1935?

A. I have read it, yes, several times.

Q. Will you please explain where in that Act you found a limitation on a motor carrier changing his schedule?

[fol. 989] A. I understood that the Act required, without referring to it specifically, for the applicant to file, as we did in this case, the schedules that he proposed to operate. It was my understanding that that schedule could not be changed without the authority of the Commission, because the only authority that we would obtain under our certificate, if I understand the law correctly, would be to operate under those schedules.

Q. And all of these applications were prepared with the idea that you would not institute additional schedules?

A. Sir?

Q. All of these applications were prepared with the idea that you would not institute additional schedules without further authority from the Interstate Commerce Commission?

A. We have no intention now of operating any additional schedules. If we find it is necessary in the public interest to do so, we shall apply to the Commission for that authorty.

Mr. Abeles: In the event, Mr. Stanley, that we find the law does not require us to secure additional authority from the Commission to place in operation further schedules, would we feel free to do so without applying to the Commission?

A. I am giving you my interpretation of the law, but I am not competent to pass upon it. I will say this, that we are going to comply with the law, whatever it is. I have [fol. 990] given you my construction of it.

(Discussion off the record).

Mr. Abeles: Mr. Chairman, there is one feature of importance upon which I want Mr. Stanley to testify, but with which he can't proceed until certain data which we have requested arrives. I should like, before the close of the consolidated hearings, to reserve the right to recall Mr. Stanley on that particular subject. It will not be lengthy.

The Chairman: Very well.

Mr. Abeles: We now offer in evidence the annual report to which Mr. Stanley referred.

The Chairman: It will be received as applicant's exhibit No. 1.

(Applicant's exhibit No. 1, Witness Stanley, is received in evidence.)

(Witness excused.)

The Chairman: We will take a five-minute recess.

(Whereupon a short recess was taken.)

The Chairman: We are ready to proceed.

Mr. Abeles: I am calling Mr. Rogers now to testify in Docket MC86687, Sub No. 6, the proposed operation between Monroe, North Carolina, and Rutherfordton, North Carolina, if the Commission please.

The Chairman: Very well.

[fol. 991] (Sub No. 6.)

R. W. Rogers having been sworn, testified as follows:

Direct Examination.

By Mr. Abeles:

Q. Mr. Rogers, is the route of the truck service proposed in this proceeding under your jurisdiction?

A. It is.

Q. And you will be responsible for its operation?

A. I will.

Q. Now will you describe the physical limits of the operation?

A. Between Monroe, North Carolina, and Rutherfordton, North Carolina, by way of Caroleen, back to Ellenboro, hence to Rutherfordton. Is there a more detailed explanation wanted?

Q. No. What is the distance?

A. The rail distance from Monroe to Rutherfordton is a 105 miles. With a short detour to Caroleen, the distance would be approximately a 112, or approximately that. We have a branch line from Ellenboro down to Caroleen.

Q. And the same truck will perform the main line and branch services?

A. That is correct.

Q. Now please proceed to describe the purpose which we have in establishing this operation and the benefits which will result from it.

A. The service is simply a movement by highway truck from one Seaboard station or depot to another Seaboard [fol. 992] station or depot on this route between Monroe and Rutherfordton. It will handle no freight except from those towns already given rail service on the route.

Q. Will it handle any carload freight?

A. It will handle no carload freight, but it will handle LCL freight that leaves partly by car and partly by truck. It will handle some freight that will move exclusively by this truck. To be perfectly frank about it, I think that this particular truck will perhaps handle more of that type of freight than on the North Carolina division.

Q. Now, when you speak of movement entirely by truck, you refer to movements between points, between Monroe and Rutherfordton?

A. That is correct.

Q. And not points beyond either of those termini?

A. That is correct.

Q. Have you stated the schedules of these trucks, Mr. Rogers?

A. I have not, but the proposed schedule is to leave Rutherfordton at 3:00 p.m., arriving at Monroe at 9:35

A. From the cotton mills, especially such places as Shelby, daily except Sunday and excepting legal holidays.

Q. Only one schedule each way per day is proposed, is it not?

A. That is correct.

Q. Now will you state the purpose we have in this service and the benefits to be derived from the operations

[fol. 993] A. There will of course be an improvement in the train movement which will permit us speeding up these train movements with the carload shipments by eliminating the checking of LCL freight at way stations. That will also help the trains in that some stops will be eliminated.

Q. Will that effect any saving in operating expenses?

A. Yes, there will be a saving of fuel by the elimination of the stops, and there will be some economy by the elimination of some over time on this district.

Q. I wish now that you would take specific movements of the several types that will benefit from this truck operation and explain how those benefits will result.

A. As to carload movement, our train number 96 is set up to leave Bostic yard at 4:00 p. m.

Q. Where is Bostic?

A. That is about 12 miles east of Rutherfordton. I can give you the exact distance in just a moment. (Continuing.) And to arrive at Charlotte at approximately 8:35 p.m. We cannot afford to leave Bostic yard earlier than 4:00 p.m. because this train will pass the intermediate points from Bostic to Charlotte before the receipt of the entire outbound load for the day.

Q. You mean from the——

A. From the cotton mills, especially such places as Shelby, Ellenboro, Cherryville and those points, particularly [fol. 994] though between Bostic and Shelby. The result is that we are having difficulty in getting number 96 into Charlotte to make connection with the outbound movement of carload shipments to connecting lines. I have in mind,

connecting with the P & N trains; and this carload movement—taking the month of March as an example, the month of May, 1937, as an example—is approximately 100 carloads of this movement.

Q. You mean now the carloads which are interchanged with connections at Charlotte?

A. At Charlotte. This is one particular interchange. Now to relieve number 96 of being tied down by this LCL, the trucking schedule will follow pretty closely the present schedule of 96, and let us advance 96 then to make the carload connections. We also have in the opposite direction a situation of that kind between Monroe and Charlotte without connections from the Seaboard Georgia division trains. We have switcher service leaving Monroe at 3:30 a.m., due in Charlotte at 4:30. If we are later than 5:30 a.m. making deliveries to connections, we will delay these carload shipments approximately 24 hours, because they will carry over for later schedules. There is some LCL freight between Monroe and Charlotte, Stouts, Indian Trail, Matthews, and Ramer, that if we handle on the truck as we proposed, will eliminate certain stops and enable me to insure the carload connections at Charlotte. Now as to the LCL freight, we [fol. 995] have a local freight leaving Charlotte, train No. 95, at 6:00 a.m. The departure of that train cannot be set up because it, too, must be held for the Monroe switcher that I just mentioned, so that carload shipments coming into Charlotte on that connection will be advanced. The result is, then, that the merchandise out of Charlotte and out of Hamlet, and out of Monroe, coming into Charlotte on train No. 87, at night, train No. 89 the evening before, gets into some of the local stations between Charlotte and Rutherfordton late in the day. Some of it is so late in the afternoon that it was not delivered and is carried over in the depot until the following morning. That means virtually the next morning delivery.

Q. The next morning delivery?

A. The next morning delivery, with this trucking service leaving Monroe at 12:01 a.m., picking up at Charlotte, thereby relieving——

Q. At what time?

A. Leaving Monroe at 12:01 a.m. and Charlotte at approximately 1:50 a.m. We will put the local station LCL freight in the depot at the smaller stations during the night

and No. 95 will reach the break bulk points such as Lincolnton and Shelby and Ellenboro early enough in the morning to insure a very prompt delivery of that business. As an illustration of what I mean, Monroe-Hamlet is what [fol. 996] I meant to say, loads a daily car for Lincolnton containing freight for stations immediately east and west of Lincolnton.

Q. You might state where Lincolnton is.

A. Lincolnton is intermediate between Charlotte and Rutherfordton, 32 miles west of Charlotte. We have a switches service at Lincolnton that does the switching work, the cotton mills and industries at Lincolnton, Cherryville, Stubbs, Stanley Creek, and after Lincolnton proper freight and the freight for delivery to the C. & N. W. Railway at Lincolnton is removed from the car, this is distributed by the Lincolnton switcher. The result is that for Stanley, or Iron, the business gets there in the afternoon. And under the truck program, business for Stanley, Cruse, and Waco, will be in the depot when those stations are opened up.

Q. Early in the morning?

A. Early in the morning. That generally is the program.

Q. Do we connect at Bostic with any foreign lines?

A. Yes. We connect with the Clinchfield or the C. C. & O.

Q. Will the proposed operation have any effect upon traffic interchanged with that line at Bostic?

A. I don't believe that insofar as the LCL freight is concerned, it will enable us to make any quicker delivery on account of the way schedules are breaking.

Q. Do you have a car that loads, or is loaded on Hamlet [fol. 997] which comes through to Bostic, Mr. Rogers?

A. Yes, we have, but that moves on a separate schedule that is not affected and would not be improved by this. Now we have another condition that is a very peculiar one, particularly on business out of Monroe. Conditions there are very similar in some respects to the Hamlet situation, except this, that the Hamlet business is through business that is previously hauled by rail service. We do have at Monroe a volume of LCL business that originates at that point. Now, under the present service, some of that business originating at Monroe is a second morning delivery, 48 hours delivery.

Q. To what points?

A. Such points as Stanley, Iron, Lattimore.

Q. You need not detail them. I meant were you referring to destinations between Rutherfordton and Monroe?

A. Between Rutherfordton and Monroe. There is also a movement——

Q. Before you go on, to make the record perfectly clear, will you explain why shipments of that sort originating at Monroe may take second morning delivery?

A. The conditions there are the same entirely as they were with reference to the Hamlet business. The Monroe, loads on Charlotte, Shelby, Lincolnton, Cherryville——

Q. You mean cars are loaded for those points, at Monroe?

A. Yes, that is correct. They are loaded to break bulk at [fol. 998] those points, containing freight for those stations and the stations immediately adjacent to it. There is also at Monroe a considerable volume of business that would move Monroe to Charlotte for delivery to connecting lines at that point. That is the Southern, the P. & N., and the Norfolk and Southern. Under the present schedule, this business very frequently does not make the interchange. It should, but the truck service, the delivery at Charlotte in time for this business to be worked, would be advantageous. As a general proposition, the Monroe-Charlotte business will be carload business, freight carload business.

Q. That benefit, I understand, will be from speeding up the schedules of your Monroe-Charlotte train?

A. That is right.

Q. Now, Mr. Rogers, will the proposed truck service over this route have any beneficial effect upon the traffic moving into this territory from points outside of it?

A. Yes.

Q. It will, as I stated, expedite the long haul business that now breaks bulk at Hamlet Transfer. It will speed up your train service and get the solid cars into these stations and out of these stations for earlier connections.

Q. Where does the traffic which comes to the Hamlet Transfer originate, generally speaking?

A. All over the United States. We have at Hamlet Trans- [fol. 999] fer, or rather we receive at Hamlet Transfer, merchandise cars from many of the larger merchandise terminals, Philadelphia, Richmond, Portsmouth, where we receive the business from the water carriers, Charleston, Wilmington, Atlanta, Greenwood, numerous places; in addition to this, we also receive at Charlotte, and will advance by this truck, LCL merchandise from Chicago, from Atlanta

to Southern Railroad transfer at Spencer, Greenwood, Monroe, Hamlet—I included the Atlanta to Greenwood. Of course, the Atlanta car would contain business that could come to Atlanta to the various connections there, including our Atlanta-Birmingham line.

Q. On this particular route, Mr. Rogers, you have an unusual number of local trains and services, have you not?

A. That is correct. The switching service, the carload movement originating and terminating in this territory is very heavy and it is a very complicated operation. We are trying to coordinate this business.

Q. Could you tell us the number of trains operated, local trains operated in this territory, including the switchers to which you have referred?

A. Well, I have two round trips of switcher service between Monroe and Charlotte, and in addition to two round trips of through service. Between Charlotte and Bostic, I have one round trip, each day, every day in the week, of through service, and one round trip six days a week of local service. At Lincolnton, we have what we call our Lincoln-
[fol. 1000] ton switcher which serves the territory between Stanley and Waco. At Shelby we have what we call our Shelby switcher that services the line from Shelby to Rutherfordton, and serves Caroleen branch, Caroleen and Henrietta branches.

Q. Mr. Rogers, you operate a truck service between Hamlet and Monroe, do you not?

A. That is correct.

Q. Will you give us the schedules of that operation?

A. It leaves Hamlet at 6:45 a. m., arrives at Monroe at 9:40 a. m.; and return trip, leaves Monroe at 10:30 a. m. arrives at Hamlet at 2:00 p. m.

Q. In scheduling your Monroe-Rutherfordton service, Mr. Rogers, has there been any effort or purpose in so arranging that schedule as to hook up with your Hamlet-Monroe service?

A. You mean the Hamlet-Monroe truck service?

Q. Yes, your Hamlet-Monroe truck service.

A. There has been no effort made to make a hook-up of that kind and there is none contemplated.

Q. Are your schedules such as to make it possible to carry through shipments by truck with reasonable expedition between points intermediate between Rutherfordton

and Monroe on the one hand, and points intermediate between Monore and Hamlet on the other?

[fol. 1001] A. No, sir. There would be more delay than would be the case with a coordinated truck-rail service, and that is a service that we would perform.

Q. You would make no effort then, I understand, to establish a through truck service between Rutherfordton on the west and Hamlet on the east?

A. No, sir. There would be no occasion for it.

Q. Reverting now to the number of local train services operated in the Rutherfordton-Monroe territory, are, or will the proposed truck service have a particularly beneficial effect in this territory in relieving those trains of the necessity of performing local deliveries?

A. Yes, particularly No. 96 in the afternoon from Bostic to Charlotte, and the Monroe switcher from Monroe to Charlotte, arriving at Charlotte now early in the morning.

Q. Have you made an estimate, Mr. Rogers, of the cost of performing this truck service?

A. I did not call it making an estimate, because we had actual figures of existing service, and could see no reason why that did not give an actual, practical basis for the costs.

Q. Those are the costs to which you have previously testified in this proceeding?

A. That is correct.

Q. Based upon that, will you state what in your estimation is your cost to perform this service?

[fol. 1002] A. The exact mileage just to a mile has escaped my memory; but there is practically 210 miles of truck service per day which at 15.2 cents per mile would make the cost about $35—$33 to $35 a day.

Q. And in a normal month, that would amount to what?

A. $858.00 a month.

Q. Mr. Rogers, if you set out to accomplish this expedition of train movement and elimination of local stops by your present train service by additional train service, what would be the relative cost as compared with the plan here under consideration? I don't mean in exact dollars and cents.

A. I should say it would cost, for just the out of pocket expense, $2600 a month; but to include the items that we also include in the trucking service, which was interest on

investment, depreciation, maintenance and so forth, the cost would be perhaps $5000 a month.

Q. As compared with your estimate of what?

A. $858.00 a month.

Q. Have you sufficient business now or in prospect to justify the operation of such additional train?

A. No, sir, other service would already be on. I have, as a matter of information, just added an additional crew in there trying to accomplish these purposes, but as I stated, we would not get No. 96 into Charlotte to make those con- [fol. 1003] nections, and to a considerable extent the additional expense has not been justified.

Mr. Abeles: That is all, Mr. Examiner.

Cross-examination.

By Mr. Watkins:

Q. I believe you testified that cotton piece goods were the main items that were moved on this service?

A. On the eastbound trip, that would be the main item on the eastbound trip. There would of course be some general merchandise, but the main purpose is the cotton piece goods and similar commodities.

Q. Do those commodities move on any quantity rates?

A. It is my understanding as a general proposition, they move on what we term a LCL rate.

Q. What is the usual size of shipments out of the mills?

A. They vary. Some of them are quite heavy. Some of them are quite bulky, without being so much weight; but generally it is pretty good tonnage.

Q. Approximately how many mills do you serve in that area?

A. I can't tell you offhand, but there is a considerable number.

Q. Approximately how many?

A. I can't give you the approximate number, even.

Q. Fifteen?

A. Yes, I would say as much as fifteen.

[fol. 1004] Q. As many as thirty?

A. I don't think so.

Q. Somewhere between fifteen and thirty?

A. Yes.

Q. And each of those mills ship daily?

A. Generally, yes.

Q. And they ship to various points in a single car, do they not?

A. That is right, we work those cars at our transfer points.

Q. Then what is the purpose of putting this truck service on to care for this cottonpiece goods?

A. There is a large quantity of the stuff that does not load at the mill. It is hauled to the depot. Shelby particularly is a heavy depot hauling point, so is the station at Caroleen. At those stations we create a car at the depot.

Q. Now, under this proposed setup, you wouldn't create that at the depot?

A. Such break bulk points, such as Shelby—I mean Cherryville, Lincolnton, Ellenboro, No. 96 would continue to pick up the merchandise that was available to it at the time it left. There is, however, a certain volume of this stuff that comes in after the departure of No. 96 that I am trying to protect, without unduly delaying No. 96. I am [fol. 1005] protecting it now with No. 96, but I am causing them some delay waiting for the late delivery.

Q. As I understand it, you do not propose to handle in this truck service shipments to or from Shelby and Lincolnton?

A. Only those that come to us after the departure of No. 96.

Q. It would be possible to eliminafe the truck service to those two points? Would it be possible to eliminate the truck service to those two points?

A. I don't think so. It would not be possible nor desirable nor advisable. So much of it is late.

Q. Because of the fact of taking care of late business?

A. That is right.

Q. That is the only reason for keeping the truck service into those two points?

A. That is correct. Wait a minute, now—don't misunderstand me. There may be some general merchandise in this to come in. Generally speaking, it is the CFB I am talking about, and that same thing would be true of Charlotte.

Q. What is that?

A. That same thing would be true of Charlotte. There will be some business going into Charlotte from local sta-

tions that we will load into the merchandise cars from Charlotte.

Q. There——

A. There may be some amount of it from local stations for Charlotte, proper, but there would not be any large [fol. 1006] quantity of it.

Q. How would a shipment from Indian Trial to Shelby move?

A. Under the proposed plan?

Q. Yes.

A. That would probably move all truck.

Q. It would not move into Charlotte, then, by rail and get into the Shelby car?

A. It is possible that we would take that allrail, depending upon just where it was in the truck. If we had to unload the complete contents of the truck at Charlotte to get to it, we might carry it on through and peddle it out at Shelby. We will load, though, at Charlotte a Shelby car as we now do, and ordinarily——

Q. That freight could move in that car, could it?

A. Ordinarily the freight from Indian Trial to Charlotte should move truck to Charlotte, and car from Charlotte to Shelby. I say it is possible, maybe, that for our convenience we might take it all the way through on the truck.

Q. That would also be true of the freight east of Charlotte to points, Lincolnton, Shelby and Bostic?

A. From east of Charlotte?

Q. Yes.

A. Now do you mean local between Monroe and Charlotte?

Q. Yes.

[fol. 1007] A. If that from an intermediate station, Monroe to Charlotte, for stations such as Lincolnton, Cherryville, Ellenboro, and Shelby, ordinarily the procedure would be that that would move to Charlotte by truck and be loaded out by car. There is a possibility that there might be an occasional shipment that would move all truck, but that ordinarily would not be good business to do it.

Q. Now, from the other direction, local points between Rutherfordton and Charlotte, moving to Monroe, what would be the ordinary way for those to move?

A. The ordinary way for that would be to go to Charlotte on the truck, and move from Charlotte to Monroe in a

package car on train No. 80 that night. There might be an occasional shipment that would go through just for operating convenience.

Q. Then, ordinarily, there would be no freight moving by truck service between points east of Charlotte and points west of Charlotte?

A. No, I didn't say that. I said that ordinarily, you mentioned Lincolnton, Shelby and those points, I said ordinarily freight for those particular points, those break bulk points, would move by car; but from one small intermediate point to another small intermediate point, it would move by truck.

Q. What percentage of the freight that moves on this line, moves to those break bulk points, as compared with [fol. 1008] the freight that moves to these small points?

A. I should say that around 80 per cent of it will be through business.

Q. That would move truck and rail?

A. That would move truck and rail, and maybe 20 per cent of it exclusively truck. That, however, is purely an estimate. I said in the beginning, the exclusive truck movement would run a little higher on this particular district than it does on any other one.

Q. Can you give us the tonnage moving in and out of these points?

A. I haven't it with me.

Mr. Watkins: I think that would be interesting, Mr. Chairman.

Mr. Abeles: You mean from station to station between Monroe and Rutherfordton?

Mr. Watkins: Yes.

The Witness: We keep no such statistics as that, purely from station to station, at all. It is possible to secure the tonnage from a station to a station, but just where it goes, I haven't got it. I couldn't get it.

Mr. Watkins: In some of these cases they have got that information, and in some others they don't have it. I don't know why it develops that way.

Mr. Abeles: Mr. Watkins, where we have had available [fol. 1009] the tonnage moving to and from the stations intermediate between the termini of the proposed truck service, that is carload; but we have not had a statement of

the tonnage that moves strictly between the intermediate points, locally.

Mr. Watkins: That was the statement you agreed in one of the cases to try to get up.

Mr. Abeles: No.

Mr. Watkins: Even if you can't get that up, I would like to see the exhibit that was put in on the operation between Henderson and Raleigh duplicated in this case.

The Chairman: That was LCL tonnage at each station?

Mr. Watkins: Yes, in and out.

Mr. Abeles: Regardless of the point of origin or destination?

Mr. Watkins: That is right.

(Discussion off the record.)

Mr. Abeles: Mr. Chairman, I didn't realize at the time I spoke that we have that statement requested by Mr. Watkins.

Redirect examination.

By Mr. Abeles:

Q. Have you that statement, Mr. Rogers?

A. I have a statement for the thirteen months period of February 1, 1936, to February 28, 1937, showing the less carload freight tonnage from and to the Seaboard stations between Monroe and Rutherfordton, including both Monroe and Rutherfordton.

[fol. 1010] Mr. Abeles: If counsel for protestants desire, I will offer this in evidence at this time.

The Chairman: That is offered as exhibit No. 2, and will be received in evidence.

(Applicant's exhibit 2, Witness Rogers, is received in evidence.)

Recross examination.

By Mr. Watkins:

Q. Does this statement cover cotton factory products?

A. Yes, it covers all business moving under LCL rates.

Q. And any quantity rates?

A. I presume so, including cotton and cotton factory products.

Q. And the majority of those commodities move to eastern markets?

A. Yes. There is some movement of it going to the bleacheries at points in South Carolina. Generally speaking, the cotton factory movement is to the eastern markets.

Q. This statement also includes inbound cotton?

A. No, a small quantity of cotton moving in broken lots; of course, carload going direct to mill where it is a solid car proposition, it does not include it. Where you have an occasional bale moving under a local bill of lading, it would be included in that.

Q. Some of these mills load solid cars of cotton and [fol. 1011] although it moves on LCL rates would that be included?

A. Cotton factory products, traveling on LCL rates, I think would be included in this.

(Discussion off record.)

Mr. Abeles: Are you through?

Mr. Watkins: Yes, I will say with this reservation, with the right to ask additional questions as they develop in the future.

Mr. Abeles: You mean as a reason for cross-examination?

Mr. Watkins: By direct or any other reason.

The Chairman: That is what he reserved a while ago, if the occasion demands.

The Examiner: There is a question I had in mind, in describing the movement from Charlotte to a point beyond one of your break bulk points or setout points, you stated that if the shipment were located in the truck so that the unloading would be difficult——

The Witness: That is right.

The Examiner: That it would therefore be advantageous to haul it on through on the truck rather than unload the whole truck and put it into a freight car?

The Witness: Yes.

The Examiner: I would like to ask this additional question, from a practical operating standpoint, considering the element of expense and possible damage claims, if [fol. 1012] you came to one of these points anywhere along this line, these break bulk points, one of these setout or break bulk points along this line, with a shipment in a truck

which was going on to a more distant point to which also a freight car would move, would not the cost of unloading and the possibility of damage claims by additional physical handling make any differences as to whether it stayed on the truck or was moved into the box car——

The Witness: Oh, yes. But the thing that controls the unloading of the truck to forwarding in the box cars, is generally the question of room. You have got to provide some relief for your truck. If you didn't, you would soon get it filled and couldn't take on any more. You have got to get it unloaded so you can forward it. That is the relief from the overload on the truck.

The Examiner: Now, if you don't have a heavy load on your truck, and it is moving anyhow to the points of destination, won't you, if it is more practical, more economical to leave it on the truck rather than load it into a freight car, run it on beyond a setout point on the truck?

The Witness: We probably would. We hope that our drivers and warehouse foremen have judgment enough to use good sound judgment in handling it. That is one reason why I did not definitely say that we would handle it one way or the other. But as a general proposition, on account [fol. 1013] of having to lighten the load on our truck, we will unload at these intermediate points and particularly at Charlotte.

Mr. Watkins: And if in order to accomplish this economy of operation, it was necessary to put on additional equipment, you would probably do so?

The Witness: We probably would.

Redirect examination.

By Mr. Abeles:

Q. In connection with the Examiner's question, Mr. Rogers, would the truck driver reaching a break bulk point at which he could either, at which as a physical matter he could either unload his shipment for trans-shipment by rail or continue to carry it by truck, could he not at that point, whether somewhere further along the line he would have what shipments he would have to pick up?

A. No, sir, not at always. Of course he would have a general knowledge of business, and for that reason he might elect to carry a small shipment that was only to go—

some peculiar circumstance—he would use his judgment in the matter.

The Examiner: That would depend largely upon your experience in operating?

The Witness: That is right. We hope to make it a practical operation.

By Mr. Abeles:

Q. Mr. Rogers, referring to exhibit No. 2, I understand that that exhibit shows the total inbound and outbound less carload shipments at the stations designated, does [fol. 1014] it not?

A. That is correct.

Q. Does that in any way indicate the volume of tonnage which would be handled by the truck serving these stations?

A. Not at all.

Q. Now, explain why?

A. Because many of these points would load solid cars, of course it would be LCL freight, but it would be a car from that station to a transfer point.

Q. Transfer point?

A. In some cases it might be a car from Shelby, to Charlotte, or from Shelby either to Portsmouth, Virginia, if they could have a reasonable tonnage for a through car, the agent has authority to load an extra car to the most distant available point where the tonnage justifies it.

Now, again, some of these mills will load at their plant to avoid hauling to the depot, carloads of this stuff traveling on LCL rates that will be billed direct to some transfer or break bulk point such as Hamlet or Portsmouth.

Q. Does this statement indicate in any respect how much of the less carload tonnage shown on it moves entirely within the territory intermediate between Monroe and Rutherfordton?

A. Not at all. It does not. It simply indicates the total LCL tonnage that originated or was loaded and forwarded from this station. Lincolnton, perhaps, had some LCL [fol. 1015] freight in that tonnage that came to us from the C & NW RR at that point. Certainly in this Lincolnton inbound business, there was some business to go to connecting lines at Lincolnton, but it was handled at that station. That statement does not indicate either the origin or destination of the tonnage shown.

Q. It does not?
A. Not at all.

The Examiner: Then that statement has no value whatsoever as a basis for any reasonable forecast of traffic which you may expect to handle entirely by truck in your contemplated truck service?

The Witness: No, sir.

Mr. Abeles: That is the reason I did not offer it, Mr. Examiner.

Recross examination.

By Mr. Watkins:

Q. Mr. Rogers, do you have a pickup and delivery service at this point?
A. Yes, sir.
Q. And an allowance in lieu thereof?
A. Yes.
Q. And when one of these mills loads a solid car at the mill, is the allowance given?
A. No, sir.
Q. No allowance is given?
A. No, sir.

[fol. 1016] Q. Then your mill customers would have the alternative of either loading a car at the mill and not receiving the allowance for carrying the freight to the depot and getting the allowance and having it move out by motor truck?

A. All of it, even that that comes to the depot, Mr. Watkins, will not be handled by truck because as I explained, No. 96 will move from these heavier points the business that is available and has been loaded at its passing time.

Q. So your customer will not have the alternative of moving it either by rail or truck?

A. No, sir. He simply turns it over to the Seaboard for the most prompt and best service that we have to offer.

Q. But by bringing the shipment to the depot after No. 96 has gone, it would move outbound by truck, would it not?

A. That is correct.

Mr. Abeles: He has no different arrangement with respect to allowances after this truck service is inaugurated than he has had heretofore, has he?

The Witness: Not at all.

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: Very well.

(Witness excused.)

The Chairman: We will take a short recess at this time, gentlemen.

(Whereupon, a short recess was taken.)

[fol. 1017] C. H. Hasty was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Will you state your name, residence, and occupation, Mr. Hasty?

A. C. H. Hasty, Monroe, N. C., Sales Manager of Monroe Hardware Company.

Q. What is the business in which you are engaged?

A. Wholesale hardware.

Q. You say you reside in Monroe?

A. Yes, sir.

Q. Mr. Hasty, you then are residing on the eastern terminus of the Hamlet-Monroe truck service now operated by the Seaboard, do you not?

A. Yes, sir.

Q. Have you had experience with that service?

A. Yes, sir. It is the west terminus of this truck service we are located on.

Q. Has that service been of benefit to you, Mr. Hasty?

A. Yes, sir, it has.

Q. Will you please explain for this record in what respects it has been beneficial to you?

A. Well, of course, we ship in the radius of around 125 to 150 miles; and we have always had difficulty in getting shipments through the Hamlet transfer in that we would go [fol. 1018] up toward Raleigh, beyond Hamlet, up that branch toward the Wilmington branch, down the Wilmington branch, and down the Columbia branch. And when we put merchandise in the depot today, it was loaded that

night, and transferred to Hamlet the next day. Our customers would get it usually the following day, unless it was on the far end of the local freight run. Sometimes it was the fourth day before they would get it, before this truck service came on. So when they put this truck service on, we put merchandise in the depot today, and they take it to Hamlet this morning and it gets to our customers the next day, unless it is far away on the local branch, then sometimes it is the third morning; but usually it is the second day.

Q. Then do I understand you to say in the territory you serve, this truck service has generally saved you 24 hours in delivery time?

A. Yes, sir. I would say generally it has. I might say, too, for a time we were forced to ship by express. The express has a freight rate down to fourth class, but, of course, there is a lot of hardware that comes under fourth class, fifth, sixth, and special iron and steel rate. So we couldn't afford to ship by express; and consequently we lost quite a volume of business too.

Q. Those lower classes, of course, you could now ship by this truck service?

[fol. 1019] A. By truck service, but we still can't ship by express unless we make a freight equalization. And, too, the express won't take certain items at all now. They passed a ruling whether local or not, I don't know; but they won't accept heavy agricultural implements or any bulky merchandise that one man can't handle. Iron pipe, bar iron, and band iron and things like that, they won't accept at all.

Q. Mr. Hasty, have you found the truck service performed on the Hamlet-Monroe operation as reliable and satisfactory as that which is performed by rail?

A. Yes, sir.

Q. Have you had any loss or damage claims for merchandise shipped by truck, more than you experienced by rail?

A. No. I don't handle that end of it, but we have very little damage claims against any form of transportation now.

Q. Do you operate any truck yourself, Mr. Hasty?

A. Well, we don't ordinarily operate; but after the Seaboard put this truck on between Hamlet and Monroe, we have been trying for several months to get this same proposed route to Rutherfordton, because we have two travel-

ing men traveling that territory up there that have been traveling a long time; and we have no direct motor express lines up there. We have two motor express lines through Monroe that run to Charlotte, but we have no rail connections that we can get to points beyond Charlotte and the Southern Railway and Norfolk and Southern points. So [fol. 1020] we have been operating a truck to Charlotte daily for Southern Railway points and Norfolk and Southern points, Southeastern Express company, and the various motor expresses. We usually run on an average one truck a day, sometimes two and sometimes three.

Q. That is the only truck that you operate?

A. Yes, sir. I might say the reason we do that is to give service, because we have Charlotte as our competitors and we have got to get stuff through Charlotte. And set up as it is now, we can't do that. And the same applies to express shipments that applies to this other. We do ship by express, we are forced to, but we have to allow our customers the difference between the fourth class rate and the special iron and steel rate on nails, horse shoes, and things of that kind.

Q. Is that expensive?

A. Well, it doesn't amount to so much just for one shipment. Some customers will phone in for an order of maybe fifteen, 20, 30, or 40 pounds and add one, two or three kegs of nails to get a minimum freight shipment. And to get it to them in less than the third morning, we are forced to ship by express and allow them that difference, even small, in the rate which will amount in most cases, of course, it varies according to distance, will average about eight cents, from six to ten cents, about and eight cents average per 100 pounds.

Q. That is of some moment to you in volume shipments? [fol. 1021] A. Well, in a year's business, it is a good bit.

Q. In the proposed truck operation will it relieve the conditions to at lease a partial extent which now render it necessary for you to operate your own truck?

A. Well, the probabilities are that we will have to do some trucking to Charlotte any way. But we will be able to get merchandise to most of our customers the next morning, as I understand this proposed schedule. In addition we will not be forced to haul Southern Railway items and Norfolk and Southern items to Charlotte, and the probability is that we will get a lot more freight business by

being able to give better service. We have various customers in outlying territory that call for motor truck delivery on account of the rail service.

Q. Then this proposed truck service will perform the same function that you are now using your trucks for?

A. Well, yes, to a large extent. I think that as a whole on the railroad points that the service will be better, but on motor lines, of course, the service will be the same.

Q. When you say the motor lines, what do you mean?

A. The regular franchise motor expresses that operate out of Charlotte, the one we haul, too.

Q. You are not referring now to points on the rail lines?

A. No, sir.

Q. As to those points, you say the proposed service will [fol. 1022] largely replace your own truck service?

A. It will replace it almost entirely as far as hauling to Charlotte is concerned, because up the Seaboard to Rutherfordton there, it is right on a direct line from us, but we have been missing a lot of that business on account of the service and we hope that if this gets in, that maybe it will increase our business to some extent. But it will enable us to ship all rail from Monroe instead of having to haul to various points on the Southern Railway, principally.

Q. Is there any through truck service now operating from Monroe to Rutherfordton, or to points between Charlotte and Rutherfordton to your knowledge?

A. I don't know about Charlotte to Rutherfordton. There is not from Monroe to Rutherfordton. There are two motor expresses that come to Monroe, but one stops at Charlotte, and the other, I think, goes southwest and south. There might be a motor express beyond Charlotte, I don't know that. The two that come through Monroe do not go that way.

Q. Mr. Hasty, what has been your experience of shipments by truck to Charlotte for points beyond Charlotte? I don't mean the quality of service, but I'm referring to the way the shipments move?

A. You mean speed?

Q. Yes, how do the independent truck lines handle shipments made by you to points beyond Charlotte, insofar as you use those truck lines?

[fol. 1023] A. Well, as a rule when we ship by truck from Monroe, we just pay them to haul it to Charlotte, a freight rate, Monroe-Charlotte rate; then it originates with the

various motor express lines and express lines, Southeastern Express and the railroads there.

Q. That is an independent operation beyond Charlotte, is it so far as you know?

A. Yes, you see the P&F and Miller Motor Express Company comes through Monroe. We ship by Fredericksoa, M&M, Helms, and maybe one or two others. I think there are smaller independent lines that I can't recall now.

Q. Is there usually any delay at Charlotte?

A. Well, most of the time there is not, but sometimes they don't usually make delivery in the afternoon. They are supposed the pass Monroe—the P&F handles most of our merchandise going up—they are supposed to pass Monroe around nine or ten o'clock in the morning. When they pass at that time they usually get it to the expresses that afternoon. But, of course, lots of times they don't run on schedule, and in those cases they usually miss.

Q. I understood you to say, Mr. Hasty, that you hoped that the proposed truck service would to a certain extent open up to you the territory between Charlotte and Rutherfordton, was that correct?

A. Well, it wasn't exactly that. We are getting a nice [fol. 1024] volume of business out of there now; but it is causing an additional expense to give service to our customers by rail, to haul to Charlotte and allow the difference in rate from the regular railway express and freight.

Q. You ship to that territory largely by express?

A. We ship a lot. We have a special crew to come on at six o'clock in the morning to enable us to get today's merchandise off by railway express. That leaves Monroe by ten o'clock.

Q. That is, I understand, because you have to compete with Charlotte competitors?

A. Yes, Charlotte, Winston, and Greensboro.

Q. Who can get into this territory more quickly than you can by all rail?

A. Yes, sir. That is not altogether the territory up the Seaboard, that is, Monroe to Rutherfordton.

Q. I'm speaking only of that territory now.

A. We expect to be able to give rail service over to Newton and Hickory, over there where we are having to ship Southeastern Express or Motor Express.

Mr. Abeles: That is all, Mr. Chairman.

Cross-examination.

By Mr. Watkins:

Q. Mr. Hasty, when does the train leave Monroe for Charlotte?

A. Passenger train?

[fol. 1025] Q. No, the freight train that you ship on.

A. We don't ship on the freight train. We ship by railway express and the balance of the stuff we haul to Charlotte by our truck.

Q. You don't know what the rail schedule is at Monroe?

A. It leaves sometime at night. But these intermediate points beyond Charlotte, if they load at Lincolnton or Shelby, they go up that night; and the local, at these various points, provided there is enough of it, switches it back and forth. But there is not a very large volume of it now on account of the service, that we just can't ship that way.

Q. Shipments leaving at night or late afternoon, you put them in the depot in the late afternoon, and they would be up in that territory around Lincolnton the next day?

A. Well, not for the local points. If there is a sufficient load for them to load, a set-off car for Monroe, it will. I think they ask us to have two or three thousand pounds before they will load a set-off car for small points.

Q. Your freight is not the only freight?

A. No, it certainly is not, but it is a good part of it for Monroe.

Mr. Watkins: That is all.

Mr. Abeles: That is all, Mr. Chairman.

(Witness excused.)

Mr. Abeles: That closes our case in Docket No. 86687, [fol. 1026] Sub. No. 2. I would like to move that the evidential parts of the application in this proceeding be considered as evidence.

The Chairman: Without objection that will be admitted. We will adjourn now until 9:00 o'clock, in the morning.

(Whereupon, at 5:15 o'clock p.m., June 15, 1937, the hearing adjourned until 9:00 o'clock a.m., June 16, 1937).

[fol. 1027] N. C. Utilities Com., Raleigh, N. C.

June 16, 1937, 9:00 o'clock, a.m.

The Chairman: We will proceed, gentlemen.

Mr. Abeles: Mr. Chairman, we would like to take up the application covering the route from Hamlet to Wilmington, Docket No. 86687, Sub. No. 5.

R. W. Rogers having been sworn, testified as follows:

Direct examination.

By Mr. Abeles:

Q. You are the same Mr. Rogers that has testified heretofore in these proceedings?

A. I am, in these consolidated proceedings.

Q. In these consolidated cases?

A. I am.

Q. Mr. Rogers, you are proposing, I understand, to establish auxiliary truck service between Hamlet, North Carolina, and Wilmington, North Carolina, are you not?

A. That is correct.

Q. Will you describe the limitations of that service where Hamlet and Wilmington are with relation to the Seaboard system?

A. We have a direct line from Hamlet to Wilmington, a distance of 110.8 miles. We propose to establish truck service, that is from one Seaboard depot to another depot, only, handling business moving on Seaboard bills of lading [fol. 1028] and way bills.

Q. Does the highway which the truck will use closely parallel the rail lines?

A. Right across, very closely, yes, sir. We serve no businesses, no towns, that we do not now serve by rail lines, and we serve those towns under this truck application only from existing depots.

Q. Now, will you proceed to describe the purpose of establishing this service?

A. This is to improve both LCL, or merchandise movements, and to improve the carload movements. At the present time we have two through trains each day, from Wilmington to Hamlet.

Q. Do you mean two trains in each direction, or one train in each direction?

A. I'm speaking now only of the westbound movement. I will speak of the eastbound in a few moments. One of these is an oil train, primarily freight trains, for gasoline and oil, leaving Wilmington at two-thirty a.m. That schedule is extremely fast, on account of having to make connections at Hamlet with the other through trains. Our general business train out of Wilmington is No. 77, which is scheduled to leave Wilmington at 8:00 p.m.; handling the merchandise. We find it difficult to get No. 77 into Hamlet to connect with No. 88, and No. 80, the northbound train.

Q. Do you mean trains northbound from Hamlet?

[fol. 1029] A. Where: From Hamlet, the Charleston line and the Cheraw line trains. This trucking service will relieve No. 77 and enable us to make this connection.

Mr. Abeles: Let me interrupt there, Mr. Rogers. What time do you have to reach Hamlet in order to make the connections you refer to?

A. We have to be there by 3:30 a. m. to make certain of these connections. We do not always make them. We propose a trucking service to leave Wilmington at 7:00 p. m., arriving at Hamlet at 12:30 a. m. That relief will materially help No. 77.

Q. Do you think that it will assure the arrival of No. 77, to make northbound connections to which you refer?

A. Yes, it will. It will enable us to accom-odate some loading at Wilmington, because we now frequently meet the request that our closing hour for departure on No. 77 at Wilmington to assure the forwarding on No. 77, is too early. We meet with frequent requests to hold No. 77 for special cars and special movements, where they have rush orders. For carload business, I'm speaking of. Now, in the opposite direction——

Q. Before you reach the opposite direction, how many local stops are there between Wilmington and Hamlet?

A. About 24.

Q. You have not yet stated, Mr. Rogers, what time your truck leaves Wilmington, have you?

[fol. 1030] A. Yes, I said 7:00 p. m., arriving at Hamlet at 12:30 a. m.

Q. That is the same hour for the scheduled departure of No. 77, is it not?

A. Yes, the same.

Q. Now, you referred to the reverse movement.

A. The reverse movement, I have one through train each day from Hamlet to Wilmington, leaving Hamlet at 8:00 p. m., arriving at Wilmington at 8:00 a. m.

Q. That is No. 78?

A. I mean 1:00 a. m. That is No. 78. In addition to that service, I have daily except Sunday, a switcher or local service leaving Hamlet at 9:00 a. m., arriving at Lumberton at 1:30 p. m.; and a second service from Lumberton to Wilmington, leaving Lumberton at 12:01 p. m., arriving at Wilmington at 5:00 p. m. No. 78 carries from Hamlet transfer, merchandise cars for Laurenburg, for Lumberton, Penbroke, sometimes for Bladenboro, and for Wilmington. These cars contain freight for those specific stations and the stations immediately nearby.

Q. Mr. Rogers, in discussing the eastbound movement, you did not refer to any cars loaded at Wilmington for points intermediate between Hamlet and Wilmington. Are there any such cars?

A. Yes, Wilmington now loads a car for Lumberton, a car for Hamlet and then a car for intermediate points [fol. 1031] between East Brook and Old Hundred. In other words, for all local stations except Lumberton. Now the Lumberton car——

Q. Are you speaking now of the east or westbound movement?

A. Eastbound movement. The Lumberton car sets out at that point. The Hamlet car sets out there, the other is worked at intermediate points.

Q. Now, will you describe the various types of service now performed over the Hamlet-Wilmington line which will be affected by the proposed truck service?

A. As I stated first on the eastbound movement, we will advance No. 77. For the eastbound movement, that is largely the benefit that we will derive; and from an operating standpoint, that is a very substantial benefit. I beg your pardon, that was the westbound movement I was speaking about where No. 77 will be expedited. The LCL on the westbound movement will not be materially improved.

Q. You are already making——

A. We are already making overnight movement on that. In addition to that, of course, Bladenboro, Lumberton, generally Pembroke, Maxton and Laurinburg, originate car-

load LCL freight, which is moved in by No. 77 for Hamlet transfers.

Q. There will be no change in that particular service? Will that traffic continue to be loaded on cars?

A. Oh, yes, that will continue to move on cars, because of the volume and because we make the connections with [fol. 1032] it, where the volume is too great for us to undertake by truck movement.

Q. No. 77 will continue to stop then at those points?

A. Yes, No. 77 will continue to stop at every point where there is carload business to or from. Eastbound it will materially advance business from Charlotte and Monroe. At the present time business from Monroe for this line, leaves Monroe at approximately 10:00 a. m.

Q. Let me interrupt there to ask whether there is a substantial movement to this territory from Monroe?

A. Yes, there is.

Q. In this?

A. Yes, the less carload business from Monroe is very heavy. The Monroe Hardware Company is perhaps the largest Hardware concern between Richmond and Atlanta. They handle tremendous tonnage.

Q. Is that the concern represented by Mr. Hasty, who testified in these consolidated proceedings yesterday?

A. Yes, that is true. He is the man. There is considerable business leaving Monroe that has to leave there by 10:00 a. m., under existing service, to make connections with the cars that we now load for No. 78 leaving Hamlet at 8:00 p. m.

Q. I beg your pardon. I didn't get that time of loading.

A. 10:00 a. m. In addition to this there is considerable volume of business from Charlotte that originates at Charlotte and that comes to us in through cars from other lines [fol. 1033] that break bulk at our depot.

Q. At Hamlet?

A. No, at Charlotte. Under the existing schedules, the business reaches Hamlet at around 3:30 a. m. and stays at Hamlet for No. 78 at 8:00 p. m. We are planning a revision of our carload service coordinating with this truck. That will let us take the complete day's loading, leaving Charlotte then at about 6:40 p. m., Monroe at about 8:00 p. m., arriving at Hamlet approximately 9:20 p. m., where this car, or cars, will be worked for forwarding on the

truck leaving Hamlet at 1:30 a. m. That will have the effect of taking 24 hours out of our existing schedule. In addition to that it will give us the complete day's loading at a number of points.

Q. On the Charlotte-Monroe territory?

A. That is true. Now Hamlet will continue to load in merchandise cars for No. 78, that they now load, such as Laurinburg, Maxton, Lumberton, because of the volume.

Q. As to those cars, then, there will be no expedition of service from this truck operation?

A. None at all.

Q. You are not then proposing to revise your Hamlet-Wilmington train service?

A. Not at all.

Q. Have you referred to traffic, less carload traffic, moving from northern points, such as Richmond, through our [fol. 1034] northern connections north of Richmond, into Hamlet, consigned to the Hamlet-Wilmington territory?

A. The bulk of this business now reaches Hamlet, transfers on trains 89 and 85, southbound trains. That business will continue to move on those trains and be worked for forwarding in the existing merchandise cars. However, No. 87, which is scheduled to arrive at Hamlet at approximately 5:15 p. m., does not work for an eight o'clock departure. The time is too short to break No. 87 and get the cars to the house, and get them out, by No. 78. Under this proposed schedule, though, the Hamlet merchandising car arriving on No. 87 from the east will be worked and such freight as it contains for the Wilmington lines will go forward that night, cutting 24 hours out of the service.

Q. In other words, you have five hours and a half more loading time to catch your truck than you have to catch your train No. 78?

A. That is true.

Q. Will there be any saving in fuel expenses by elimination of local stops by trains No. 77 and 78?

A. Yes. The number of these stops that will be eliminated is, of course, guess work. The dispatchers, in discussing it with them, feel that we should eliminate an average of six stops each night, at stations where this train would not also stop to handle carload business.

[fol. 1035] Q. Is that in both directions?

A. Yes—no. Yes, that would apply both to No. 77 and No. 78.

Q. Then you would say a total of 12 stops?

A. As near as we can estimate it, that would.

Q. How much do you estimate will be saved in fuel expenses from the elimination of these stops?

A. That is a difficult proposition. The estimates that are made vary by location, the length of your train, grade, and it will run, I should say, from $1.50 to $3.00. It is a most difficult thing to definitely determine.

Q. A minimum of $1.50 under the most favorable conditions?

A. Yes, that includes overtime and fuel, and those items. There are many factors that have to enter into the question of what it takes to stop a train.

Q. Have you any estimate of the cost of this truck operation?

A. Our past experience has been that it will cost us approximately 15.2¢ per mile *vocering* all expenses, including depreciation, interest, up-keep, wages, gasoline, oil, and so forth.

Q. You have already testified to the details of that cost estimate which, I understand, is estimated upon your Hamlet-Monroe experience?

A. That is correct.

Q. Now, using that as a basis, what is your estimated cost of this truck operation?

[fol. 1036] A. About $35.00 a day.

Q. That amounts *ot* how much a month?

A. $910.

(Discussion off the record.)

By Mr. Abeles:

Q. Mr. Rogers, will one truck be able to perform the services in both directions on this route?

A. Yes, sir.

Q. Where will this truck originate, Hamlet or Wilmington?

A. Wilmington.

Q. And your crew will have a 13-hour layover, will they not?

A. At Wilmington?

Q. No, at Hamlet?

A. No, sir. We have approximately an hour.

Q. I beg your pardon, a one hour layover. Are there any foreign rail line connections at points intermediate between Hamlet and Wilmington?

A: Yes, we have important connections at Lumberton and Laurinburg.

Q. Will you mention the roads in connection with the points?

A. At Laurinburg with the L&S, at Alma with the Maxton-Alma Southbound, at Pembroke with the Coast Line. There are some other connections, but those are the ones that are most important.

Q. Will the proposed truck service affect in any way the movement of receipts to and deliveries from these connections?

[fol. 1037] A. It will advance business going to those lines, reaching Hamlet on No. 87, and it will advance the business to those lines that originate at Monroe and Charlotte territory, just at it does to our own local stations on that line. The principal interchange of LCL is at Laurinburg and——

Q. With what line?

A. The Laurinburg Southern and at Lumberton with the V&CS, I believe that is the name of it.

Mr. Abeles: That is all, Mr. Chairman.

Cross examination.

By Mr. Watkins:

Q. Are you planning to use only one crew on this truck?

A. That is an operating detail that we do not yet know, but the cost is set up to cover two men, because, under the present service, our 15.2¢ is based upon an operator 104 miles.

Q. Does that truck have just one man on it or two?

A. The present truck has one.

Q. This truck has two?

A. As it will be a night operation, it is possible that there will have to be a helper.

Q. Are you figuring on two crews or one?

A. As I say, that is an operating detail I don't know what our experience will be. He will have twelve hours rest at Wilmington, and whether or not it would be more profitable to have one crew to make a round trip, or how the relief will

[fol. 1038] be worked out, that is a detail we have not yet considered. We simply set up in our estimate of the cost what we expected was enough expense to cover that.

Q. Those two men would be on duty from 7:00 p. m. to 6:45 a. m. the next morning?

A. If they made the round trip, yes, sir.

Q. You are only planning to use one truck?

A. One truck.

Q. You would eliminate this local car that is loaded for these intermediate points by this truck?

A. Yes, we will have that one saving. We will not eliminate the present set-out cars that I have mentioned.

Q. At Lumberton?

A. Lumberton, Maxton, Laurinburg, and Bladenboro. In fact, we make set-out cars for any point when there is sufficient tonnage to justify it.

Q. Now, the purpose of the Seaboard Air Line Railway is to advance schedules in handling freight, is it?

A. That is correct and to effect some operating economies.

Q. And wherever it is possible to advance the movement of less than carload freight by the use of truck service, you intend to do so?

A. That is correct, yes.

Q. Now, your proposed service would leave Wilmington at 7:00 p. m. at night and arrive at Hamlet at 12:30 a. m.?

[fol. 1039] A. That is right.

Q. And you are also proposing a service leaving Hamlet at one a. m. and arriving in Columbia, South Carolina, at 6:10 a. m. by motor carrier?

A. That is correct.

Q. And a service leaving Hamlet at 1:30 a. m. and arriving at Wilmington at 6:45 a. m.?

A. That is correct.

Q. Thus there could be a continuous truck movement overnight between those points?

A. Yes, sir, there could be.

Q. You are also proposing a loop service, serving Hartsville, Sumter, Bishopsville, and towns in that vicinity, which leaves McBee at six in the morning?

A. There is some service proposed over that route. Just the exact schedule, I don't know. I was not in the hearing at Columbia when that was explained.

Q. Your truck from Hamlet to Columbia reaches——

Mr. Abeles: Just a moment, Mr. Chairman. I had not objected to the line of inquiry because I was waiting to see where it was to lead. I think we are again getting into the same exploration of services not involved in this proceeding, as to which there was not testimony on direct examination. I think your Honor has heretofore ruled, that in view of the setup of these hearings, they should be considered [fol. 1040] as separate proposals, and that the question now being put is improper.

(Discussion off the record.)

(Question read by the Reporter at the request of the Chairman.)

The Chairman: Having heard the Hamlet-Columbia case, I think some similar question was asked and answered there. I have forgotten by which side, so I'm going to let the witness answer. Just as a mere matter of form in the record, I can't see that it affects it materially.

By Mr. Watkins:

Q. If you are proposing a truck service which leaves McBee at 6:00 a. m.——

Mr. Abeles: Just a moment, the witness has stated he knows nothing about the McBee-Sumter service, isn't that correct?

Mr. Watkins: I asked him if this was proposed by the Seaboard. I didn't ask him if he knew anything about it, because I know from past experience that one Division Superintendent has never come in contact with anything else except his Division.

Mr. Abeles: Very well, why did you ask the question then?

By Mr. Watkins:

Q. If the Seaboard Air Line is proposing a service that leaves McBee at 6:00 a. m. in the morning and reaches Hartsville and Sumter before 8:15, would it be possible for a shipment to leave Wilmington at 7:00 p. m. in the evening and move over those three operations, reaching those points in the morning?

[fol. 1041] A. Yes, that would be possible.

Q. You are proposing a service, leaving Wilmington, North Carolina, at 7:00 p. m., arriving at Hamlet at 12:30

a. m. You are proposing a service from Raleigh to Hamlet, leaving Raleigh at 7:30 a. m. and arriving at Hamlet at 2:00 a. m.?

A. What is that, now?

Q. Just a minute. You are proposing a service leaving Wilmington at 7:00 p. m. and arriving at Hamlet at 12:30 a. m.?

A. That is correct.

Q. And you are also proposing a service leaving Hamlet at 2:00 a. m. and arriving at Raleigh, North Carolina, at 7:30 a. m.?

A. That is right.

Mr. Watkins: That is all.

Redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, what is the schedule of your Hamlet-Monroe truck?

A. In which direction?

Q. From Hamlet to Monroe?

A. It leaves Monroe at 6:45 a. m.—leaves Hamlet at 6:45 a. m., and arrives at Monroe at 9:40 a. m. It returns, leaving Monroe at 10:30 a. m., arriving at Hamlet at 2:00 p. m.

Q. Taking the eastbound movement, would you use all truck service between points on the Hamlet-Wilmington route, on traffic moving from that territory to points be-
[fol. 1042] tween Hamlet and Monroe, westbound?

A. Under our proposal, there would be very little of this, because our Monroe business, as I stated, now has to be delivered at the depot by 10:00 a. m., that is for a truck movement. Under our revision of train service, at the time this truck service goes in we will have train service out of Monroe that will give us an entire day's loading and that train service should normally carry about 95 per cent of that business.

Q. You described the eastbound movement, did you?

A. That is correct.

Q. Now, this revision of train schedules from Monroe to Hamlet, then appears to be an effort to adjust your train service in order to coordinate with the truck service, is that correct?

A. That is correct, and improve the merchandise movement out of the Charlotte-Monroe territory, particularly.

Q. Now, on your westbound traffic from the Wilmington-Hamlet territory, to the Hamlet-Monroe-Charlotte territory, what is the relationship between the two truck services on those respective services or routes?

A. It would be so incidental that we do not give it material consideration at all. There may be some business moving from a local station on the Wilmington line, for instance, to a local station on the Monroe line that would move entirely by truck; but there is practically no such [fol. 1043] business. The majority of the business that the Monroe truck handles and the majority of it that it will continue to handle is business that will reach Hamlet by rail cars.

Q. I see. Take a movement from out of your non-car points on the Wilmington line?

A. Shipments from Councils, if there was such a shipment, going to the station on the Monroe-Hamlet line, would move all truck. But a shipment from Laurinburg, Maxton, Pembroke, Lumberton, Bladenboro, and Wilmington would normally move by rail into Hamlet, because the established cars make that connection.

Q. Suppose you had a movement on the Wilmington line, do you make up any cars on intermediate points on the Wilmington line for traffic moving to Hamlet or beyond?

A. Oh, yes. We originate cars every day at Laurinburg, Pembroke, Lumberton, Bladenboro, and Wilmington. They not only originate cars for Hamlet transfer, but they make through cars for such points as Portsmouth where the tonnage justified it; but every day we have cars from those points for Hamlet.

Q. Take a point east of Lumberton, where I believe you stated you originated cars daily for westbound movement on the Wilmington line, such as Clarkton and so forth. A less carload shipment originating at Clarkton and assigned to a point on the Hamlet-Monroe line, would you carry that less carload shipment by truck to Lumberton and load it on the car for the Hamlet-Monroe line or would you carry it all the way through by truck?

[fol. 1044] A. That is an operating condition that would have to be met as the condition arose. There would be probably certain shipments of certain sizes that it would be

profitable and probable to carry it all the way through to Hamlet in a truck; and on the other hand, if the volume of it was great enough to effect the load on the truck, we would lighten the truck by loading it into a freight car at Lumberton.

Q. The situation in that respect is similar to that which you described in connection with the proposed operation between Monroe and Rutherfordton?

A. That is correct.

The Examiner: Isn't that condition true of any coordinated truck service, that good sense and experience, rather than any fixed policy, will govern the operation?

The Witness: Absolutely. It has got to be a practical operating matter, that is all.

Mr. Abeles: I now propose to take up the proposed truck operation from Hamlet to Raleigh, Docket No. MC86687, Sub. No. 4.

R. W. Rogers was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Rogers, I understand you propose to establish auxiliary truck service for handling LCL freight on the stations served by the Seaboard between Raleigh and Hamlet, [fol. 1045] is that correct?

A. That is correct.

Mr. Abeles: Mr. Chairman, I now move that the evidential parts of the application in this Docket be considered as a part of the record.

The Chairman: It will be so admitted.

By Mr. Abeles:

Q. Will you describe this service, Mr. Rogers?

A. We propose a truck service paralleling the Seaboard Air Line Railway handling LCL freight, station to station only, from Hamlet to Raleigh, leaving Hamlet at 2:00 a. m., arriving at Raleigh at 7:30 a. m.; and the return direction leaving Raleigh at 8:30 a. m., arriving at Hamlet at 2:05 p. m., with a detour or loop service via our Pittsboro branch into Pittsboro. We will serve no towns where we do not

now give rail service, and we will serve only through Seaboard depots and stations.

Q. Mr. Rogers, are there any mail stations between Apex and Sanford on the main line?

A. Apex and Sanford, yes.

Q. I understand you will not serve that part of the main line with this truck service?

A. No, in one direction we will not serve Moncure and Merry Oaks by truck. We will serve in the southbound direction.

Q. Then do I understand that the Pittsboro loop is made only on the northbound?

A. It was made on both trips.

Q. Made on both trips?

[fol. 1046] A. Yes.

Q. What would be your operations on the trips on which you serve both the Pittsboro loop and the main line loop?

A. In the northbound trip, we will make a loop from Sanford to Pittsboro and from Pittsboro to Apex; and such freight as there is for Moncure will be placed in the depot at Pittsboro to move out of there by train service into Moncure the next morning. Or in case of a late train service, it can be taken by the southward truck movement.

Q. What is the distance operated by this proposed truck service?

A. The distance from Hamlet to Raleigh is approximately 97 miles. I do not recall the exact mileage that this truck will make, but roughly, I would say, about 215 to 220 miles a day.

Q. On the round trip?

A. On the round trip, and one truck will make the round trip.

Q. Now, describe the purpose of this proposed service?

A. This is to expedite LCL freight into these stations. There will be some incidental improvement in train service, but that was not sufficient to be a very heavy factor in the consideration. There will be some improvement in the outbound service, but that was not a big factor. But it will materially advance the inbound merchandise to all of these stations, excepting those that we now load for break bulk points and from Richmond and Raleigh and Portsmouth. [fol. 1047] It will materially advance the business under this coordinated service from Charlotte-Monroe-Hamlet,

territory, even to those points. As an illustration: Portsmouth now loads a daily car on Sanford, containing freight for Sanford, Pittsboro, Moncure, Colon, and so forth. That car arrives at Sanford at approximately 9:30 a. m. The scheduled movement, I believe, is 8:50, but I'm giving you the nominal train arrival. Sanford works that car, as we term it, removing the freight for Sandord and connecting lines and then it moves out of Sanford northward, on the Pittsboro switcher, leaving Sanford at 5:00 p. m., and arriving at Pittsboro at approximately 6:25 p. m., which is, of course, carried over in the depot for the nexr day's delivery. Under this trucking service, that business would be loaded either to Raleigh or to Apex, where we now also have set-out cars made by Portsmouth. It will leave Raleigh at 8:30 a. m. and will be at Pittsboro by 10:20 a. m. the first morning out of Portsmouth, instead of the second morning.

Q. Saving 24 hours?

A. Saving 24 hours. Exactly similar conditions exist on merchandise originating at or coming to us through the Richmond gateway, as Richmond also loads a Sanfo car on approximately the same schedule. The Hamlet transfer loads a Sanford car, that reaches Sanford at 8:30 a. m. This is the business that came into Hamlet the day before and it reaches Sanford at approximately 8:30 in the morning. [fol. 1048] That is similarly worked at Sanford, and that business reaches Portsmouth on the second morning.

Q. By train you mean?

A. By train. Under this trucking service that business would go into Pittsboro from Hamlet by truck.

Q. Arriving at about what time?

A. The second morning—wait a minute, the first morning at 5:45 a. m., or one full day, or earlier, arrival.

Q. From what origin points does traffic come to this territory through the Hamlet transfer?

A. From all south and western points. We have cars breaking at Hamlet from Chicago, Charlotte, Greenwood, Atlanta, Birmingham, Wilmington, Columbia, Charleston, Savannah, and many intermediate or more distant points. There are no cars from the south regularly breaking at any intermediate points between Hamlet and Raleigh. The bulk is always broken at Hamlet. The bulk of LCL business that we now handle into this territory is from the north and through Richmond and Portsmouth gateways.

Q. Now, will you follow that suggestion and describe the effect of the proposed service upon the LCL traffic moving from the northern and eastern points?

A. Just as an illustration, in the Sanford-Pittsboro territory, practically the same conditions will exist at almost any point in that territory excepting Aberdeen, Southern [fol. 1049] Pines, Sanford, and Apex, because to those points both Richmond, Raleigh and Portsmouth make setout cars. Now, under this coordinated truck service, the business that now comes into Hamlet from the Charlotte-Monroe territory, reaches Hamlet in the morning, is worked there that day, and goes out the second morning from Hamlet, on No. 88. With our proposed new coordinated rail and truck service, this particular Monroe-Charlotte business reaching Hamlet by the new service will go forward by truck, except that for Aberdeen, Sanford, Apex, and in some cases Moncure and Southern Pines. It will move by truck, getting a 24 hour advance; and that for the points just named, will be worked that night and forwarded in the No. 88 cars the next morning, being advanced 24 hours.

Q. Will there be any direct all-truck movement from the Hamlet-Monroe territory to the Hamlet-Raleigh territory?

A. There may be some incidental shipment. There is no volume of business moving at the present time from one local station, to another, other than Monroe. That business at the present time comes into Hamlet about 2:00 p. m.; but with the new service it should normally leave Monroe by rail, because the rail movement out of Monroe would give a complete day's loading. As a general proposition, more than 90 per cent of this movement in this territory will be by both rail and truck instead of just truck. That is my estimate, of course.

Q. Did you refer earlier in your testimony to the pos- [fol. 1050] sibilities of savings in operating expenses of your train service?

A. That is not of a material amount in this particular movement.

Q. Is there any expedition of your train movement which will result from this proposed truck service?

A. There is also on the same line, the matter of economy. It does not reach a volume that it does in the other territories.

Q. Neither of those features is important in connection with this proposal?

A. Of course, any economy and any saving is important; but it is not as heavy as it is in the other territories. It was a controlling factor.

Q. Now, have you any basis for estimating the cost of this proposed truck service?

A. Based on our Hamlet-Monroe operation that we have had in since 1932, it will cost us approximately 15.2¢ per mile or about $35.00 a day, $900 per month, roughly speaking.

Mr. Abeles: That is all, Mr. Chairman.

Cross-examination.

By Mr. Watkins:

Q. You don't show Moncure on your proposed schedule, do you?

A. I don't recall. I thought we showed Moncure in one direction.

Mr. Abeles: You mean in the application?

Mr. Watkins: Yes.

[fol. fol. 1051] The Witness: The train service that we would have out of Moncure in connection with this would be the approximate truck service. That may have been omitted from the original schedule.

Mr. Watkins: That is all.

Mr. Abeles: Mr. Chairman, I wish to offer the evidential parts of the application in this proceeding to be considered as a part of the record in this case.

(Witness excused.)

The Chairman: All right.

Mr. Abeles: At the close of Mr. Stanley's general testimony applicable to all of these proceedings, I reserved the right to recall him to testify on a subject as to which we had not received necessary information. We have that information and I would like to recall him at this time.

The Chairman: All right.

W. L. Stanley testified further as follows:

Redirect examination.

By Mr. Abeles:

Q. Mr. Stanley, have you information as to the relative variation as between the carload and less than carload tonnage moved by the Seaboard in recent years?

A. I have.

Q. The years 1929 to 1936, both inclusive, will you state the information that you have?

[fol. 1052] A. I have a statement which shows by years for the period indicated, the number of tons of carload and less than carload freight handled by the Seaboard. Without referring to each specific year, I will state that in the year 1929, we handled 15,794,960 tons of carload freight and in 1936 we handled 12,758,567 tons of such freight. In the year 1929 we handled 784,186 tons of less than carload freight and in the year 1936 496,991 tons of less than carload freight. Comparing the year 1936 with the year 1932, the tons of carload freight decreased 19.2 per cent. And the tons of less than carload freight decreased 36.6 per cent.

Q. Mr. Stanley, assuming that the less carload tonnage had declined at the same percentage rate as the carload tonnage, have you determined what the increased revenue to the Seaboard would have been in the year 1936?

A. There were many reasons for that decline in both carload and less than carload business, during the period of 1929 to 1936 the principal one being, of course, the depression. Had the less than carload business not decreased to a greater extent than the carload business during this period we would have handled in 1936, 136,631 tons more of less than carload freight than we actually had. Applying to that the revenue per ton received by us in 1936 on less than carload freight, which was $8.78, we would have earned on that business $1,199,620.

[fol. 1053] Q. In your opinion, Mr. Stanley, why was the decline in less than carload tonnage greater during the period you mentioned than the decline in carload tonnage?

A. The competing truck operations cater largely to less than carload business or to the handling of those commodities which represent the cream of the traffic and bear the higher rates. In my judgment, the explanation of the difference between 19.2 per cent, representing the decline

in carload business between 1929 and 1936 and the 36.6 per cent representing the decline in less than carload business during the same period, represents the loss that we have sustained to other competing forms of transportation.

Q. There has been some improvement in both carload and less carload tonnage in 1936 as compared with 1935, has there not, Mr. Stanley?

A. Yes, sir.

Q. Have you the respective figures for less carload tonnage for those two years?

A. Yes, in 1935 the number of tons of LCL freight handled was 444,057, in 1936, 496,991.

Q. Have you information showing the ratio between the less carload tonnage carried in those two years and the total tonnage carried by the system?

A. In 1936, the LCL freight represented 3.78 per cent of the total tonnage, both carload and less than carload handled by us. In 1935, it represented four per cent of the total.

[fol. 1054] Q. Where are you obtaining those figures?

A. From page 29 of the annual report of the Seaboard Air Line Railway for the year 1936.

Q. Which has been introduced in evidence in these proceedings?

A. Yes.

Q. So that although the LCL tonnage increased in actual figures its proportion to the total tonnage continued to decline?

A. It continued to decrease.

Q. In 1936?

A. Yes.

Q. What is the significance in your opinion of the comparative figures that you have just given?

A. Well, as I indicated a minute ago, I think it shows that our loss of less than carload business to competing forms of transportation has been very much greater during this period than our loss of carload business due to the depression has been.

Q. And the principal purpose of the establishment of truck services which you are here proposing is directed to which class of traffic, Mr. Stanley?

A. Exclusively to LCL traffic.

Q. Is the recovery of the disportionate losses of less carload tonnage which you have described in your opinion important to the Seaboard?

A. It is very important, and I personally and officially feel that we have the right to recover a part of that loss if we possibly can.

[fol. 1055] Q. In your opinion will the proposal here under consideration be efficaceous in that direction?

A. It will certainly have a tendency to bring about that result. I don't think it would recover all of it. As I said it certainly would have a tendency in that direction. I don't mean to say that we would recover all of the 136,631 tons of freight that I referred to, but I think we have the right to indulge in a reasonable hope that we may get back a part of that.

Q. And the reason for that result or effort to accomplish that result is, I presume, the improvement in service which has been testified to here on less carload traffic?

A. In other words more expeditious movement of this traffic by the railroad which the public, or which traffic the public may see fit to intrust to us, and then, of course, economies in the operation in the movement, in the savings that will be effected that have been testified to, in train operations and the speeding up of carload business.

Mr. Abeles: That is all.

The Examiner: Mr. Stanley, have you given any consideration to any effect which the operations of so-called carloading or forwarding companies may have had upon LCL freight on the Seaboard system?

The Witness: I have not, Mr. Examiner, made a study of that.

[fol. 1056] (Discussion off record).

The Witness: I made a very superficial study of it, but not enough to justify my speaking authoritatively about it.

The Examiner: I would like to know.

(Witness excused.)

Mr. Abeles: That, Mr. Chairman, closes the applicant's case in chief on the consolidated hearing. May I make this suggestion or statement, I believe that I have moved that the evidential parts of the applications in all of the consolidated dockets, being Docket No. 86687, Subs. Nos. 2, 4,

5, and 6, be considered as a part of the record in these cases. In the event that I have overlooked any of them, may I at this time request that that motion be directed to the applications in all of these Dockets?

The Chairman: Without objection the request is granted and the evidential parts of all applications mentioned in the request are admitted into evidence. We will recess for five minutes.

(Whereupon a short recess of five minutes was taken.)

The Chairman: I will swear R. S. Koonce, Ch. H. Howie, F. L. Formeduval, H. H. Hunt, Jack Williams, H. B. Koonce, W. W. Roper, F. H. Mendenhall, at once.

R. S. KOONCE was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Mr. Koonce, with what company are you con-
[fol. 1057] nected?

A. Motor Transit Company.

Q. Where are the headquarters of that company?

A. Headquarters are in Raleigh, operating from Raleigh to Richmond, Raleigh west to High Point, and Greensboro and southeast to Fayetteville.

Q. Do you serve all intermediate points?

A. All intermediate points.

Q. What other truck lines operate in this area?

A. Now, are you speaking——

Q. I'm speaking about the area you operate in?

[fol. 1058] A. Barnwell Brothers, Horton Motor Lines, Atlantic States Motor Lines, Colonial Motor Lines, Miller Motor Express, Hooks Motor Line, Interstate Transfer, and there are numbers of others. There are same that I don't recall.

Q. Now, I believe you testified that you operated from Raleigh south. Is that over U. S. Highway No. 1?

A. No, we operate south as far as Sanford, but through Greensboro.

Q. Now, north of Raleigh, what road do you operate on?

A. We operate over U. S. No. 1 all through the way north of Raleigh to Richmond.

Q. And do you serve all intermediate points?

A. All intermediate points.

Q. In the territory that you operate in have you seen any demand for additional service?

A. No.

Q. Are you financially able to put on motor trucks if the service demanded it?

A. Yes, sir. In fact, we keep three additional trucks to take care of any overflow of business that might occur at any place.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. You stated, Mr. Koonce, that in your opinion there was no demand for additional service?

A. Yes, sir.

[fol. 1059] Q. You meant by that for the type of service that you were rendering, did you not?

A. I meant that if there had been a demand. No doubt some demand would have been made on us.

Q. For the type of service you were rendering?

A. Yes.

Q. Do you know anything about demand on the railroad for traffic or for service on traffic carried by them?

A. No, not the railroad service.

Mr. Abeles: That is all.

(Witness excused.)

JACK WILLIAMS was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected?

A. Raleigh-Danville.

Q. Where is their headquarters?

A. Raleigh.

Q. What position do you hold with them?

A. Assistant Manager, operating manager of the Raleigh-Danville.

Q. How long has that company been in operation?

A. Around 7 or 8 years, I guess.

Q. Where does that company operate?

A. Raleigh to Henderson.

[fol. 1060] From Raleigh to Henderson. Then from Henderson you operate from Henderson to Danville?

A. No, sir, from Raleigh to Henderson. It is called the Raleigh-Danville Motor Express.

Q. Do you serve all intermediate points between Raleigh and Henderson?

A. Yes, sir.

The Examiner: Raise your voice. We can't hear you at all.

By Mr. Watkins:

Q. Is that over U. S. No. 1?

A. No. 1 to Franklinton, from Franklinton down to Louisburg, back U. S. No. 1 into Henderson.

Q. Do you serve Louisburg?

A. Yes.

Q. With what truck companies are you competing?

A. The names of the companies that are operating on this?

Q. Yes.

A. Well, there is quite a number, I guess.

Q. Name some of them.

A. Motor Transit is operating from Raleigh to Henderson, Colonial is operating from Raleigh to Henderson. The same amount of lines that Mr. Koonce has named, those trucks are through Raleigh out to Henderson.

Q. Has it come to your attention that there is any demand for additional transportation facilities in this area?

[fol. 1061] A. Not that I have heard of.

Q. Is your company in position to take care of additional traffic?

A. Yes.

Q. Is your company in position to change its schedule if the movement of freight so demanded?

A. Yes, sir.

Q. You interchange with other truck lines at Raleigh?

A. Yes, sir.

Q. And what general territory do they cover?

A. Well, they cover the east from here to Wilson, Wilson east of Greenville, from Raleigh to New Bern and Raleigh to Fayetteville and beyond and from Raleigh to Charlotte.

Q. Do you handle any traffic over your line that originates in the eastern part of the U. S.?

A. Yes, sir.

Q. And that traffic that originates in the southern part, towns in South Carolina and Georgia?

A. Yes, sir.

Mr. Watkins: I think that is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Williams, in stating that you knew of no demand for additional service in the territory in which you operate, you were referring, of course, to the type of service you render, were you not?

[fol. 1062] A. Yes, sir.

Q. Do you not know anything about the demand upon the railroads?

A. No, sir.

Q. For service on traffic carried by them?

A. No, sir, I do not.

Redirect examination.

By Mr. Watkins:

Q. How many trucks a day do you operate over this line from Henderson to Raleigh?

A. We operate a round trip daily, one truck. And we have a truck that is making Creedmoor and Oxford. In other words it is counted the same as one truck into Henderson, round trip daily.

(Witness excused.)

A. D. BURTON was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. What are your initials, Mr. Burton?
A. A. D. Burton.
Q. Mr. Burton, with what company are you connected?
A. Helms Motor Express.
Q. And what is your position with that company?
A. General manager.
Q. How long has that company been operating?
A. Since the latter part of 1928 and 1929.
[fol. 1063] Q. And what territory do you serve?
A. From Charlotte to Raleigh and from Charlotte to Durham.
Q. Over what route do you operate?
A. No. 27 into Albemarle and to Durham and Raleigh.
Q. Did you serve any of the points on U. S. No. 1?
A. Yes, sir. Aberdeen, Southern Pines and Pinehurst.
Q. You serve from Aberdeen all the points between Aberdeen and Raleigh on U. S. highway No. 1?
A. Yes, sir.
Q. What type of service do you give?
A. Well, we have trucks operating over that every day, every morning and afternoon from Raleigh, and morning delivery out of Charlotte.
Q. Do you interchange with other lines handling traffic generally over the Atlantic Seaboard?
A. Yes, sir.
Q. Have you made any investigations to determine whether or not the service in this territory that you serve was satisfactory?
A. Well, I talked within the last few days with 130 customers of ours that are using our service over that operation.

Mr. Abeles: Just a minute.

The Witness: I make no——

Mr. Abeles: Just a minute before you answer that question. Now, going to 130 customers, I think he intends to [fol. 1064] cite for this record what they told him. I think that is obviously improper.

The Witness: I have their own signature as to the service and to the demands of service.

The Chairman: I don't think that admissible. You can state what you know, but not what somebody tells you.

The Witness: I haven't had any request or any complaint on the service in there by anyone. And I feel like if there was any additional service desired that they would have made some mention of it in some way or another.

By Mr. Watkins:

Q. Now, south of Aberdeen on U. S. No. 1, do you serve those points between Aberdeen and Hamlet?

A. Well, we do as the business demands in there, to Hoffman.

Q. But the demand for service in there is not sufficient?

A. Not on a daily schedule.

Q. Would you be willing to interchange with the Seaboard Air Line Railroad to handle traffic over that territory?

A. Well, I feel like in this case if the Seaboard Air Line Company could make money out of an interchange there we could and I would be perfectly willing to do so.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Burton, you do now *now* or have you at any time ever changed traffic transported by you with any railroad, have you?

[fol. 1065] A. Well, I wouldn't say directly that we haven't because in some cases we have, but not to any extent that schedules are made.

Q. As usual you do not do a thing like that?

A. Not as a usual thing.

Q. If you change traffic with connections at all, it is with connecting truck lines?

A. That's right.

Q. You stated that you knew of no demand for additional service in the territory in which you operate. You, of course, were referring to your truck service, were you not?

A. Well, I was directly, yes, sir.

Q. You know nothing about the demand for improvement in service on less carload shipments carried by rail, do you?

A. No, sir. I haven't gone into it fully.

Mr. Watkins: You compete with the railroads for less than truck load shipments?

The Witness: Yes.

(Witness excused.)

H. H. HUNT was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Where do you live, Mr. Hunt?

A. Elizabethtown.

Q. And do you have a truck operation?

[fol. 1066] A. Yes, sir.

Q. What is the name of your company?

A. H. H. Hunt and Company.

Q. You will have to talk louder.

A. H. H. Hunt and Company.

Q. And what is your position with the company?

A. Manager.

Q. And where does that company operate?

A. Out of Wilmington, from Wilmington to Fayetteville and Lumberton.

Mr. Abeles: I can't hear you.

The Witness: From Wilmington to Fayetteville and Lumberton, and points between.

By Mr. Watkins:

Q. What is the road number you use between Wilmington and Lumberton?

A. No. 211.

Q. Do you serve Bolton, Clarkton, and Ottsville, and intermediate points between those and Lumberton?

A. Yes, sir.

Q. What is your service in that territory?

A. Daily.

Q. Both ways?

A. Both ways.

Q. Do you connect with other truck lines generally serving the southeastern territory?

[fol. 1067] A. Yes, sir.

Q. In this territory that you operate in have you seen any demand for any increased transportation facilities?

A. I have not.

Q. Are you in position to meet any demands for increased transportation facilities?

A. Yes, sir.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Hunt, you stated you knew of no demand for additional service in the territory in which you operate? You were speaking solely of over the road truck service, were you not?

A. Yes, sir.

Q. You know nothing about what, if any, demands are made upon the railroads for improvement in less carload tonnage carried by them?

A. No, sir.

Mr. Abeles: That is all.

Mr. Watkins: You compete with the railroads for less than carload traffic?

The Witness: Yes.

Mr. Watkins: That is all.

(Witness excused.)

[fol. 1068] Mr. F. L. Formyduval was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected?

A. P. & F. Motor Express.

Q. Where do you live?

A. Wilmington.

Q. What is your position with this company?

A. President.

Q. Where does that company operate?
A. From Wilmington to Charlotte, route 20, U. S. 17.

Mr. Abeles: What is the name of your company?
The Witness: P. & F. Motor Express.

By Mr. Watkins:

Q. Will you please describe the routes over which you operate between Wilmington and Charlotte?
A. We come right up in by Bolton, Whiteville, Chadbourn, Tabor City, Lumberton, Red Springs, Raeford, Maxton, Laurinburg, Hamlet and Rockingham, and right straight from there into Charlotte, Wadesboro, Monroe and all intermediate points.
Q. Does the road that you have described follow along the line of the Seaboard Air Line Railroad?
A. Well, it does, not all the way. It leaves at Lumberton, you see. We turn off into Whiteville and Chadbourn.
Q. At Wilmington?
A. Yes, 211 follows the Seaboard part of the way, 20 out to the right.
[fol. 1069] Q. Then you don't serve the points between Lumberton and Bolton on 211?
A. No.
Q. What motor carriers serve that?
A. Hunt Motor Express and Miller Motor Express.
Q. Both serve it?
A. Yes, sir.
Q. Now, you do serve between Monroe and Charlotte on U. S. 74?
A. Yes, sir.
Q. And you serve between Lumberton and Hamlet on U. S. 74?
A. Yes, sir.
Q. And between Bolton and Wilmington?
A. Yes, sir.
Q. Now, what type of service do you have in there?
A. We have daily each way.
Q. Have you seen any demand for additional transportation facilities in that area?
A. No, sir. I have not.
Q. Do you connect with other carriers operating between or generally over the eastern Seaboard?
A. Yes, sir.

Q. I believe you testified you served Monroe?

A. Yes, sir.

Q. Do you handle any business for the Monroe Hardware Company?

A. Yes, sir, right much.

[fol. 1070] Q. How do you handle that business for them?

A. Well, we serve them three times a day and if they have something they want to roll we send a truck out of Charlotte to get it.

Q. You give three services a day to the Monroe Hardware Company?

A. Yes, sir.

Q. Is your company in a position to meet any demand for additional transportation facilities?

A. Yes, sir.

Mr. Watkins: I think that is all.

Cross-examination.

By Mr. Abeles:

Q. Where does that traffic from Monroe Hardware Company move, generally speaking?

A. Right much of it is into Charlotte and some is all up and down the road to Hamlet. Not a whole lot to Hamlet and Rockingham, Wadesboro and some we bring down to Bladenboro.

Q. Not much to Hamlet, though?

A. Not a whole lot to Hamlet.

Q. Mr. Formeduval, have you ever interchanged traffic with the Seaboard Air Line?

A. I don't know that I have. If I do, I don't recall it. The only thing I imagine we have given them some shipments all right. I'm sure we have out of Wilmington.

Q. You don't know?

[fol. 1071] A. No, I wouldn't say, but I'm sure I have generally speaking. Something that we would ship, you see.

Q. Generally speaking, you don't interchange?

A. No.

Q. Traffic with the railroads in the ordinary course of your business?

A. No, sir.

Q. When you referred to no demands for additional service in the territory in which you operate, you were speaking, of course, of truck service only, were you not?

A. Well, that is only what I know anything about.

Q. Well, you know nothing about the service rendered by railroad?

A. No, sir,

Q. On LCL traffic or demands for improvement?

A. The only thing that I know that we do as near as we can, is to meet their less carload shipments, if we can get hold of them.

Q. What?

A. Meet their less carload shipments, their rates, if we can find out what they have on them.

Q. Do you have any trouble finding out what the rates are?

A. Yes, sir, we have had.

Q. Those rates are published in public tariffs, aren't they?

[fol. 1072] A. They are, but I have known a few cases when they won't match up with ours.

Q. You complain because the LCL carload rates do not match up with yours?

A. That's right.

Mr. Watkins: You compete with the railroads for LCL traffic?

The Witness: Yes, sir.

The Examiner: These shipments your are testifying in regard to, at least some of them are interstate shipments?

The Witness: Yes, sir.

Mr. Abeles: One moment, when you stated that you had interchanged shipments with the Seaboard?

The Witness: No, I didn't believed I interchanged. I said I made shipments over the Seaboard like I would have a carload of hardware and take it over to your place and ship it, you see.

By Mr. Abeles:

Q. That is simply a delivery by you as a shipper?

A. That's right.

Q. By rail?

A. Yes.

Q. That does not move on a through bill of lading?

A. No.

Q. It moves entirely on the railroad bill of lading?

[fol. 1073] A. Yes.

Q. From the railroad point of origin to the railroad destination?

A. Yes.

The Chairman: Mr. Formeduval, I didn't exactly understand what was intended to convey by the statement there that carload rates didn't match up with yours

The Witness: I'm talking about Mr. Self, the less carload rates. That is all I'm talking about.

(Discussion off record.)

(Witness excused.)

C. H. Howie was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Mr. Howie, with what company are you connected?

A. Miller Motor Express.

Q. Where does the Miller Motor Express operate?

A. They operate from Charlotte to Wilmington, from Charlotte to Atlanta, and from Charlotte to Philadelphia, Pennsylvania.

Q. Do you operate over U. S. highway No. 1?

A. Yes, sir, part of the way.

Q. Between what points on the highway do you operate?

A. You mean on northbound?

Q. Yes.

[fol. 1074] A. We operate through Raleigh on Highway No. 1, to South Hill, we follow No. 1 on through Washington there, through Richmond.

Q. Then you operate a through service between Raleigh and Richmond?

A. That's right.

Q. What type of service do you give in there?

A. The service that we render between those points, we are not handling any freight, any local freight. We are not handling local freight.

Q. You are in a position to handle local freight?

A. Yes, sir. We are in position to handle it.

Q. You accept shipment by interchange with other lines to those points?

A. Yes.

Q. And do you connect with other Motor carriers at various places?

A. Yes, sir.

Q. And handle traffic generally over the Atlantic Seaboard?

A. Yes.

Q. Now, in your operation between Charlotte and Wilmington, over what route is that operation?

A. It is operated over No. 74, through Monroe, Wadesboro, Rockingham, Hamlet, Laurinburg, etc., and then we have a local truck out of Laurinburg on a daily schedule to Fayetteville, makes the loop to Fayetteville and back [fol. 1075] into Laurinburg at night. Then our through truck operates from Laurinburg into Wilmington.

Q. Over that route?

A. Through, he connects on 74 to Chadbourn, and then 17 on into Wilmington.

Q. Do you serve the points between Lumberton and Bolton on 211?

A. Yes, sir. Our truck will either on leaving Laurinburg, it will either work through Bolton or it will come back through Bolton. It operates a return trip, see.

Q. You do give a service on both routes?

A. Both routes, yes, sir.

Q. And serve all intermediate points on that route, that you have described?

A. Yes.

Q. Now, have you seen any evidence of the necessity for additional service in the territory in which you operate?

A. No, sir.

Q. Is your company in a position to give additional service if it is demanded?

A. We are.

Q. And if additional local service was demanded between Raleigh and Richmond you would be in position to give it?

A. Yes, sir.

Mr. Watkins: That is all.

[fol. 1076] Cross-examination.

By Mr. Abeles:

Q. On what route was it, Mr. Howie, that you said you did not perform local service?

A. On highway No. 1; from Raleigh to Richmond.

Q. Have you filed interstate tariffs to and from those local points?

A. No, sir. We haven't other than the fact that we are a member of the Southern Conference and they file it.

Q. Do you know whether you have in effect published tariffs to and from those points?

A. No, sir.

Q. You have not?

A. No, sir.

Q. Then you couldn't perform any local service on that route?

A. Not interstate, no, sir.

Q. When you stated that you knew of no demand for additional service in the territory in which you operate, you were referring only to the type of service you perform, I presume?

A. Yes, sir.

Q. You know nothing about demands for additional service or improved service on LCL freight carried by the railroad?

A. No, sir.

The Chairman: You do not pick up interstate at any point north of Fayetteville, do you, a shipment outside, do you? [fol. 1077] The Witness: We pick up freight in Raleigh for northbound points, see?

Redirect examination.

By Mr. Watkins:

Q. Mr. Howie, has the Miller Motor Express filed application for the grandfather clause to the I. C. C.?

A. Yes, sir.

Q. Does that application cover service between all local points on all lines that you operate on?

A. Yes, sir.

Q. You applied for that?

A. Yes, sir.

Q. Are you familiar with a rule in Miller's MC-ICC No. 2, which publishes rates to and from all intermediate points by the use of the next most distant point?

A. Yes.

Q. Then if the occasion did arise you could handle shipments to and from all local points on your line?

A. Yes.

Q. By the use of this intermediate route?

A. That's right.

The Chairman: In so far as tariffs are concerned?

The Witness: Yes.

By Mr. Watkins:

Q. I believe you stated your application covered that, too?

A. Yes.

[fol. 1078] (Discussion off record.)

Recross examination.

By Mr. Abeles:

Q. Mr. Howie, from what point south of Raleigh do you operate in connection with your Raleigh-Richmond route?

A. From Charlotte.

Q. Let us assume a shipment moving from Charlotte to a local point midway between or approximately midway between Raleigh and Richmond, would you apply under the tariff that you have just described the Raleigh rate or the Richmond Rate?

A. If it was not shown we would apply the rate shown in the group guide for the point.

Q. If you had a shipment moving from Charlotte to a point midway between Raleigh and Richmond, it is my understanding that under that tariff, you would apply the Richmond rate, is that correct?

A. No, sir. It would probably be a point in between Raleigh and Richmond that would be used in rate basis. Any number of points grouped under a certain rate basis.

Q. That would be true only if you had a tariff covering a midpoint between Raleigh and Richmond?

A. Yes.

Q. Have you stated what route you operate over between Raleigh and Charlotte?

A. No.

[fol. 1079] Q. What road is that?

A. We operate over through Greensboro and also through Albemarle.

Q. That is not the road over which the service proposed in these proceedings will operate, is it?

A. No, sir.

Q. It does not follow the Seaboard Air Line, does it?

A. No, sir. Between Charlotte and Raleigh, it does not.

Q. You said between Charlotte and Raleigh, it does not?

A. No, sir.

The Chairman: It touches the Seaboard at Sanford?

The Witness: Yes.

The Chairman: That is the only point?

The Witness: Yes, sir.

The Chairman: It follows the Seaboard from Sanford to Raleigh?

The Witness: Yes.

By Mr. Abeles:

Q. I thought you stated that you went through Greensboro?

A. We operate both ways.

Redirect examination.

By Mr. Watkins:

Q. Mr. Howie, I hand you Miller's MF-ICC No. 2, known as the South Group Guide, and ask you if your line is a participating carrier in that tariff?

A. Yes, sir.

[fol. 1080] Q. I ask you to refer to that tariff and list for the record all points that are shown on your line between Richmond and Raleigh?

A. Raleigh——

(This discussion off record.)

By Mr. Watkins:

Q. Now, Mr. Howie, will you please read into the record the stations between Raleigh and Richmond as shown in the South Group Guide, Miller's ICC No. 2.

A. Millbrook, Neuse, Wake Forest, Youngsville, Franklinton, Kittrel, Henderson, Graystone, Middleburg, Manson, Ridgeway, Norlina, South Hill, Dewitt, Petersburg and Richmond.

Q. So you have specific rates to and from all those points?

A. Yes, sir.

The Chairman: Purposely for interstate shipments?

The Witness: Yes, sir.

(Discussion off record.)

(Witness excused.)

F. H. MENDENHALL was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected, Mr. Mendenhall?

A. Barnwell Brothers.

Q. What is your position with this company?

A. Vice-President in charge of operation.

[fol. 1081] Q. How long has this company been operating?

A. Since 1931.

Q. What territory do they operate in?

A. Generally from Charlotte and Shelby to the east, New York, Philadelphia, Baltimore, and Richmond.

Q. On highway No. 1, what points do you serve?

A. Where do you mean?

Q. (Indicates) from Norlina north.

A. On U. S. highway No. 1?

Q. Yes.

A. From Norlina north.

Q. You serve the territory from Norlina to Richmond?

A. Yes, sir.

Q. And do you serve intermediate points there?

A. Yes, sir.

Q. Now, then going west from Charlotte, what points do you serve?

A. Well, we serve practically all the points in that area.

Q. Do you serve the points on state Highway No. 27, between Charlotte and Lincolnton?

A. Yes, sir.

Q. Do you serve Mt. Holly?

A. Yes, sir.

Q. Stanly?

A. Yes.

[fol. 1082] Q. High Shoals?

A. Yes, sir.

Q. And do you serve the points on state Highway No. 50, between Lincolnton and Shelby?

A. Yes, sir.

Q. And intermediate points?

A. Yes, sir.

Q. Do you serve the points between Shelby and Rutherfordton?

A. Yes, sir.

Q. Do you serve Henrietta and Carolene?

A. Yes, sir.

Q. What type of service have you got in that territory?

A. Daily.

Q. What is the main commodity shipped in that area?

A. You mean——

Q. Outbound?

A. Cotton and factory products.

Q. Do you serve all the cotton mills in that general area between Charlotte and Rutherfordton?

A. Yes, sir.

Q. You give daily service there?

A. Yes, sir.

Q. What other carriers, motor carriers, are serving that territory?

A. Horton Motor Lines, Smith Transfer, Fredrickson [fol. 1083] Motor Express and many others that I don't recall now.

Q. Have you seen any demand for additional service in either that territory or the territory on U. S. Highway No. 1, which you have previously described for additional service?

A. No, sir. None that has not been met.

Q. Is your company in position to increase its service?

A. Yes, sir.

Q. Approximately how many trucks do you operate?

A. In the entire system?

Q. Yes.

A. Between two and three hundred.

Q. And do you interchange with many other carriers with freight moving generally along the Atlantic Seaboard?

A. Yes, sir.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Mendenhall, you do not participate, you do not interchange shipments carried by you with rail lines? Through shipments, do you?

A. At their request, no.

Q. What was that?

A. At their request, no.

Q. What do you mean by at their request?

A. We have offered shipments for interchange, but they will not interchange with us except by applying a combination of local rates.

[fol. 1084] Q. At their own rates?

A. Yes. They will not advance the charges.

Q. In other words, they will not shorthaul shipments?

A. I wouldn't say that.

Q. When you have offered those shipments to the railroads, you have done so as a shipper, have you?

A. We had to, because they would not participate in the through rates.

Q. Have you ever attempted to establish through rates?

A. Yes.

Q. Who, with?

A. With the Southern Railway.

Q. From points served by the Southern Railway?

A. Yes, sir.

Q. In other words, they refused to shorthaul themselves?

A. They have also refused to take shipments from points that they serve to points that we did not serve?

Q. On the Southern Railway?

A. Yes, sir.

Q. But points served by another railroad?

A. Yes, sir.

Q. In other words, they refused to shorthaul another railroad as well as themselves?

A. I suppose that was their interpretation.

Q. When you stated, Mr. Mendenhall, that you knew of no demand for additional service in the territory traversed [fol. 1085] by you, you were referring to the type of service you performed were you not?

A. Well, I referred to the sentiment as is expressed to our company, the form of contact we have with the trade, the general public.

Q. And that contact is in connection with truck moving over the roads, is it not?

A. Well, as I say, they didn't differentiate or make any differences. We have not had the request for any additional service that we did not meet.

Q. Do you know anything about traffic moving partly by rail and partly by truck?

A. No.

Q. Then you don't know whether there is any demand on the part of the shippers by rail for that type of service?

A. No.

Mr. Watkins: You compete with the Railroads, do you not?

The Witness: Yes, sir.

Mr. Watkins: That is all.

(Witness excused.)

C. A. Duggan, Jr. was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected?

A. Horton Motor Lines, Charlotte.

[fol. 1086] Q. How long has that company been operating?

A. I don't know just when the company was incorporated. Mr. Horton was receiver for B. F. Withers, Jr., Incorporated. He began the receivership in 1928; if I'm not mistaken, it was incorporated as Horton Motor Lines in the latter part of 1930 and 1931.

Q. And been operating continuously?

A. That's right.

Q. What is your position with that company?

A. Traffic manager.

Q. What territory does Horton Motor Lines serve?

A. You mean with our own units?

Q. Yes.

A. We serve the territory between—we have terminals at Shelby, N. C., Charlotte, Burlington, Greensboro, and we operate a line up the Shenandoah Valley through the Cumberland Mountains, and Pittsburgh. We go up U. S. highway No. 1, and have terminals at Richmond, and Washington, D. C., Baltimore, Philadelphia, and New York. Then we have a line that goes out of Baltimore up Shenandoah Valley up to WilkesBarre. We have terminals there in WilkesBarre, Pennsylvania.

Q. You operate on all those lines and you serve intermediate points?

A. Yes, sir.

Q. On U. S. highway No. 1, what is your southernmost point on that highway?

[fol. 1087] A. I think it is Raleigh. I declare I don't be absolutely positive. I'm sure that is the way they go.

Q. From Raleigh, Wake Forest, right on up U. S. No. 1 through South Hill into Richmond. And you serve all intermediate points between Raleigh and Richmond?

A. Yes, sir, if the traffic is there to be served.

Q. Have you seen any demand for additional service in that territory?

A. No, sir.

Q. Now, between Charlotte and Shelby and Rutherfordton, what kind of service have you got there?

A. We have daily service. We have terminals at Shelby and we have daily pick up service out of there to all points in that territroy.

Q. I'll show to you the schedules proposed by the applicant in his application 86,687, Sub. No. 6, and ask you whether or not you serve the points shown on that schedule between Charlotte and Rutherfordton?

A. Yes, sir, there is Charlotte, Pinoca, Mt. Holly, Iron, Crouse, Waco, Lattimore, Mooresboro, Caroleen, Cliffside Junction, etc. We also serve Cliffside out of Shelby terminal. Cliffside, Ellenboro, Henrietta and Forest City, yes, sir.

Q. You have daily service to those points from Charlotte?

Moore

A. Yes, sir.

Q. Have you seen any demand for additional service in [fol. 1088] that territory?

A. No, sir.

Q. And you compete with the railroads for traffic in that area?

A. Yes, sir.

Q. Do you connect with other truck lines handling traffic generally in the eastern part of the U. S.?

A. Yes, sir.

Q. Between all points on your system?

A. That's right.

Q. Is your company in position to give additional service if it is demanded?

A. Yes, sir.

Q. Approximately how many trucks do you operate?

A. I don't know just exactly, Mr. Watkins. I think that 368 is the last report that I had.

Cross examination.

By Mr. Ableles:

Q. Mr. Duggan, you transport no through traffic on through routes on rates with the railroads, do you?

A. Only as a shipper.

Q. By that you mean you make shipments by railroad?

A. Yes. We sometimes get traffic at points that it is not convenient to serve, and use the railroad as a shipper?

Q. When you stated that you knew of no demand for [fol. 1089] additional service in the territory in which you operate, you were referring to the type of service performed by your company, were you not?

A. Yes.

Q. You know nothing about whether there is any demand for improvement in less carload shipments partly by rail and partly by motor carrier?

A. No, other than the general talk that you hear that is all.

Mr. Abeles: That is all.

Mr. Watkins. You compete with the railroads for traffic?

The Witness: Yes.

(Witness excused).

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 558

AMERICAN TRUCKING ASSOCIATIONS, INC., SOUTHERN MOTOR CARRIERS' RATE CONFERENCE, FLAMINGO TRUCK LINES, INC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, LEGH R. POWELL AND HENRY W. ANDERSON, RECEIVERS OF THE SEABOARD AIR LINE RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

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C. H. FREDRICKSON was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Mr. Fredrickson, with what company are you connected?

A. Fredrickson Motor Express Corporation.

Q. What is your position with that company?

A. President and general manager.

Q. How long has that company been in operation?

A. Since 1921.

Q. Have you filed application?

A. Yes, sir.

Q. Under the grandfather *cal*use?

[fol. 1090] A. Yes, sir.

Q. What territory do you serve, Mr. Fredrickson?

A. From Charlotte to Greensboro, Charlotte to Winston-Salem, Charlotte to Statesville, Charlotte to Hickory, and we haul intermediate points, and Charlotte to Asheville.

Q. And on the routes you have described you serve all intermediate points?

A. Yes.

Q. I show you a proposed schedule attached to applicant's application, 86,687, Sub. No. 6, and ask you whether or not you serve the points shown from or between Charlotte and Rutherfordton?

A. Every one.

Q. What kind of service do you give in that territory?

A. From Charlotte to Lincolnton we have got two trucks a day both ways. From Charlotte to Shelby, we have got five, to Rutherfordton, three.

Q. Have you seen any demand for additional service in that territory?

A. No, sir.

Q. Is your company in position to meet any such demand if such arose?

A. Yes, sir. We always have extra trucks available.

Mr. Watkins. That is all.

[fol. 1091] Cross examination.

By Mr. Abeles:

Q. Mr. Fredrickson, you do not operate between Rutherfordton and Monroe, do you?

A. No, no further east than from Rutherfordton to Charlotte.

Q. Not even Rutherfordton and Monroe?

A. Yes, we do operate from Rutherfordton.

Q. I beg your pardon I meant from Charlotte to Monroe?

A. No.

Q. Do you transport through traffic carried partly by your company and partly by rail?

A. No, sir. A little bit by transfer with Railway Express at Rutherfordton, northwest.

Q. Not freight.

A. No, going west.

Q. When you stated that there was no demand for additional service in the territory in which you operate you were speaking exclusively of the type of service you rendered, were you not?

A. Yes, sir.

Q. You know nothing of course about the possible demand for additional less carload shipment partly by rail and partly by motor carrier?

A. No.

Mr. Abeles: That is all.

Redirect examination.

[fol. 1092] By Mr. Watkins:

Q. Do you interchange with the express company?

A. No, we pay them their charges and charge the local rate from Rutherfordton to Chimney Rock or Lake Lure.

Q. And you interchange freight with other truck lines on through rates between all points in the eastern Seaboard?

A. Yes, sir.

Q. You interchange interstate, too?

A. Yes, sir.

(Witness excused.)

W. W. RAPER was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Mr. Raper, with what company are you connected?

A. Lewis and Holmes Motor Freight Corporation.

Q. How long has that company been in operation?

A. It had been in operation since 1931.

Q. In what territory do you serve?

A. We serve directly the Piedmont area between Burlington, Greensboro, Winston, High Point, Charlotte, Greenville, and into Atlanta. We serve that route or any routes in that territory. We have a route that goes by U. S. 29, to Greenville; and we take what we term the mountain road that goes down from Chicora and Gainesville into Atlanta. Then we go up U. S. 29 direct. It takes in Hen-
[fol. 1093] dersonville, Hartsville, Roystown to Atlanta. Then route No. 3 is served from High Point, via Charlotte to Rock Hill, Columbia, Batesburg, into Augusta and then to Athens and Atlanta. Then we have a route that serves from High Point into Rockingham, Florence, Darlington, Kingstree, Monks Corner, into Charleston covering Pee Dee Section of South Carolina.

Q. Does your operation come into U. S. Highway 1 at Hamlet?

A. No, it comes into Highway 1, I think, it comes in at Rockingham, Cheraw and down through Columbia.

Q. Through McKee and Camden into Columbia?

A. That's right.

Q. Do you also serve Hartsville, Darlington, Florence, and Sumter?

A. All those. Practically all the Pee Dee section. We do not get over to Marion, Mullins, Conway, and Myrtle Beach. We don't serve that territory directly. We do serve it in connection with the New South Express Lines.

Q. And you interchange with other truck lines handling traffic generally over the Atlantic Seaboard?

A. Yes, sir.

Q. And in the territory which you serve have you seen any demand for additional service?

A. For additional service, no, sir.

Q. Is your company in position to meet any demand for [fol. 1094] additional service?

A. Yes, sir.

Mr. Watkins: I think that is all.

Cross examination.

By Mr. Abeles:

Q. When you were speaking of additional service, Mr. Raper, you refer, I presume, only to service entirely by the truck?

A. That is all we are supposed to know about.

Q. That is all you do know about?

A. I wouldn't say that.

Q. Do you know anything about transportation of less carload shipments by rail and partly by Motor Carrier?

A. Yes.

Q. What do you know about that?

A. Well, if you will go back to the tariffs there are certain rates published from certain points to certain forwarding points that does not carry the regular LCL rate, less truck load rate.

Q. Are you speaking of truck carriers or rail?

A. Truck carriers to be shipped by rail.

Q. I don't understand that.

A. All right, I'll make a direct illustration. There is in the south, commodity tariffs rates published from North Wilkesboro to High Point, 20¢ per hundred to be shipped to Lincoln, Nebraska, Chicago, New York, and Texas points, [fol. 1095] by the Acme Transfer and Storage Company and rates published with the Acme Transfer and Storage Company, Universal Carloading and Distributing Company, The Overland Transportation Company, the Southwestern Carloading Company, National Carloading Company. That is about that I'm familiar with.

Q. Now, do those shipments to which you refer move from points of origin to points of destination on one bill of lading?

A. On one bill of lading partly with some lines, yes, sir.

Q. Does your company participate in those movements?

A. We participate not in those movements. No, sir, not that I made direct reference to.

Q. That is what I'm speaking of. Now, do you know whether the truck lines that do participate in those movements issue a single bill of lading upon which the entire movement takes place?

A. Yes, sir.

Q. From point of origin to point of destination?

A. Yes, sir.

Q. Is that a through truck rail rate?

A. To make it specific, from Cleveland, Ohio, to Charlotte, North Carolina, we handle on a freight bill of lading, issued by the truck.

Q. Issued by the Universal Carloading and Distributing Company over to Baltimore, the Preston Truck Company direct to Charlotte, delivered on the Universal Carloading bill?

[fol. 1096] A. Not by railroad. Not to Charlotte but from Cleveland railroad to Baltimore.

Q. Not on railroad bill of lading?

A. Not on railroad bill of lading, certainly not.

Q. Mr. Raper, have you heard the testimony in any of these cases sufficiently to familiarize yourself with what the applicants here are proposing to do?

A. No, sir. I have not. I have been out of town. I got in this morning about two o'clock and they got me out of bed this morning. That was the first I knew about it.

Q. You can't say whether or not there is demand for the-r service of the character proposed in these applications by the shippers of less carload freight by rail?

A. I would say that there is no demand other than a few specific points.

Q. Then you do know what the railroad applicants are proposing here?

A. Generally, yes, sir. They are proposing, if I may clarify my opinion, from Richmond on U. S. highway, through to Columbia, South Carolina, probably Charleston, South Carolina.

Q. By truck?

A. By Seaboard truck, the express truck. The truck lines which they propose, I understand that you filed an application from Richmond, if I get it, by U. S. right straight down through Columbia; and probably going to [fol. 1097] Savannah. I believe it goes as far south as Estelle, South Carolina.

Q. Do you know how they propose to use those truck services to which you have referred?

A. To compete with the truck services that are now on the road.

Q. Do you know whether we propose to carry traffic through Richmond to Estelle, let us say?

A. Certainly.

Q. Entirely by truck?

A. No, sir. I don't know that.

Q. You don't know just how we propose to use this truck service?

A. No, sir.

Mr. Abeles: That is all.

Mr. Watkins: You are not aware of any limitations in these territories?

The Witness: I shouldn't think it would be restricted.

The Chairman: Mr. Raper, using that same routing that you referred to out of Cleveland, Baltimore, to Charlotte, North Carolina, do I understand the rates over a combination rail truck routed like that, are, any given class of commodity cheaper than by rail?

The Witness: For any? I don't quite understand you, Mr. Self.

[fol. 1098] The Chairman: For instance stuff out of Cleveland going to Charlotte that came by rail to Baltimore then from Baltimore to Charlotte by truck is the rates on that combination, on that routing, cheaper than it would be on the same class of commodity by all rail?

The Witness: I interpret that it would carry the same rate. The only reason why we get the business is because of service.

The Chairman: That is all.

By Mr. Abeles:

Q. You think that service is better?

A. You asked me what I think, yes.

Q. Than all rail service?

A. I just don't care to answer.

Q. You don't know?

A. I have my opinion.

Q. I'm asking for your opinion?

A. I imagine it would be much better.

Q. All right. If the evidence in this case showed that the Seaboard Air Line by utilizing the truck service which they are proposing to establish can improve the service performed on less carload shipments made by their patrons, do you think——

A. Their patrons?

Q. The railroad patrons.

A. You mean the Seaboard patron or all railroad patrons?

[fol. 1099] Q. Seaboard. I'm talking only about the Seaboard. Do you think they should be permitted the opportunity of improving that service in that way?

A. I agree with the Government on that. I don't think they ought to be permitted to do it.

Q. What?

A. With the ICC.

Mr. Abeles: I thought that is all we were trying to decide in this case. That is all, Mr. Raper.

(Witness excused.)

H. B. Koonce was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Mr. Koonce, with what company are you connected?

A. Atlantic States Motor Lines, Incorporated.

Q. When did that company begin operations?

A. Well, under that name last November. But its predecessor, in 1932.

Q. You have just recently changed the name of it?

A. Yes.

Q. But the operation has been in existence since 1932?

A. Yes.

Q. And application under the grandfather clause has been filed?

[fol. 1100] A. Yes.

Q. I believe there has been a proposed report on your application?

A. Yes.

Q. What territory do you operate in?

A. From High Point to New York, From High Point to Atlanta, and into Asheville, North Carolina, and around through Lynchburg to Roanoke, Virginia.

Q. Do you interchange traffic with other truck lines?

A. Yes.

Q. Now, do you give any service on U. S. Highway No. 1?

A. Yes.

Q. Between what points on U. S. Highway 1, do you serve?

A. Our service comes down U. S. Highway No. 1, all the way into Columbia, and into Augusta, and then we leave U. S. 1, right below Augusta and go into Atlanta over No. 78.

Q. Then you operate over U. S. Highway 1, between Richmond and Columbia?

A. That's right.

Q. And do you serve intermediate points?

A. Yes.

Q. Now, do you operate west of Charlotte on State Route 27A, and State Route 150?

A. Yes, sir.

Q. Do you give service to Shelby and Lincolnton?

[fol. 1101] A. Yes, sir.

Q. I show you proposed schedules attached to application No. 86,687, Sub. 6, and ask you if you serve all the points shown on that schedule?

A. Yes.

Q. I show you a proposed schedule attached to application 86,687, Sub. 1, and ask you if you serve those points shown on that schedule?

A. Yes.

Q. In the territory that you serve have you seen any demand for additional service?

A. No, I have not.

Q. Do you compete with the railroads for traffic?

A. Yes, sir.

Q. You also compete with express companies?

A. Yes, sir.

Q. Forwarding companies?

A. Yes, sir.

Q. All operating in this area?

A. Yes, sir.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Koonce, you don't operate between Charlotte and Monroe, do you?

A. Charlotte and Monroe, yes. We have a line of trucks that serve all this territory.

[fol. 1102] Q. Do you operate over the highway, paralleling the Seaboard Air Line between Charlotte and Monroe?

A. Yes, sir.

Q. Highway No. 74?

A. Yes.

Q. Do you serve all intermediate stations on that rail route?

A. Yes, sir.

Q. Mr. Koonce, when you referred or when you stated that there was no demand for additional traffic or additional service over the routes which you traverse, you were speaking of the type of service which is rendered by your company?

A. Yes.

Q. You know nothing about whether there is or is not a demand by shippers of less carload freight for coordinated service, the authority for which the applicants are seeking here?

A. No, sir.

Mr. Abeles: That is all.

Mr. Watkins: That is all for the protestants.

(Witness excused.)

The Chairman: It has been agreed by counsel in the cases MC-86687, Subs. 2, 4, 5, and 6, that briefs would be filed on or before July the 12th, and that one brief will be filed for all cases with the understanding that if and

when it comes to be heard before section 5, Division 5 of the [fols. 1103-1104] Interstate Commerce Commission that each case may be argued separately. I'm taking the responsibility of conferring with the Commissioner in South Carolina, a member of Joint Board Number 2, with reference to permitting the same procedure in Docket MC 86687, Sub. 3; and Sub. 1, and Docket MC 86687, before Joint Board 177, and in Sub. 7, before Joint Board No. 7, for the purpose of consolidating briefs in all of these proceedings.

The Chairman: If there is nothing else, we will now adjourn.

(Whereupon at 12:25 p. m., June 16, 1937, the hearing closed.)

[fol. 1105] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC 86687, Sub. No. 9

In the Matter of The Application of SEABOARD AIR LINE RAILWAY CO. (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a Corporation, of S. A. L. Railway Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of Florida, Between Jacksonville and Live Oak, Florida.

Docket No. MC 86687, Sub. No. 10

In the Matter of The Application of SEABOARD AIR LINE RAILWAY CO. (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a Corporation, of S. A. L. Railway Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of Florida Between Live Oak and River Junction, Florida.

Tallahassee, Florida,
October 19, 1937,
At 10 o'clock A. M.

Before: Joint Board No. 205

Present: Honorable Eugene S. Matthews, of the Florida Public Service Commission

Richard Yardley, Examiner, Interstate Commerce Commission

APPEARANCES:

Charles T. Abeles and W. T. Oven, Seaboard Air Line Railway Building, Norfolk, Virginia, appearing for the applicants.

[fol. 1106] Stanton Walker, Jacksonville, Florida, appearing for Acme Freight Lines, Great Southern Trucking Company, Central Truck Lines, K & L Transportation Company, Southern Motor Carriers Rate Conference, Cooper Truck Lines, Blue's Truck Line, Holstien and Son, Goodall Brothers Truck Line.

Leo P. Kitchen and Dan R. Schwartz, 302 Atlantic National Bank Building, Jacksonville, Florida, appearing for L & L Freight Lines, Inc., of Miami, Florida, and R. C. Motor Lines, Inc., of Jacksonville, Florida, interveners.

J. A. Bliss, Box 90, Jacksonville, Florida, appearing for St. John's River Line Company and Tamiami Trail Tours, Inc., interveners.

H. C. Roland, Lake City, Florida, appearing for Union Bus Company.

[fols. 1107-1108] PROCEEDINGS

Chairman Matthews: The Interstate Commerce Commission has set for hearing at this time and place docket number MC 86687, Sub. No. 9, in the matter of the application of the Seaboard Air Line Railway Company (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation, of S. A. L. Railway Bldg., Norfolk, Virginia, for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common

carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of Florida, between Jacksonville and Live Oak, Florida.

The Commission has also set for hearing at this time and place docket MC 86687, Sub. No. 10, in the matter of the application of Seaboard Air Line Railway Company (Legh R. Powell, Junior, and Henry W. Anderson, Receivers), a corporation, of Seaboard Air Line Railway Building, Norfolk, Virginia, for a certificate of public convenience and necessity Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of Florida, between Live Oak and River Junction, Florida.

Who appears for the applicants?

Mr. Abeles: Charles T. Abeles and W. J. Oven.

Chairman Matthews: Who appears for protestants?

[fol. 1109] Mr. Walker: Stanton Walker, appearing for—Mr. Chairman, are these cases consolidated for the purpose of the hearing?

Chairman Matthews: Yes, they will be consolidated for the purpose of the hearing.

Mr. Walker: Stanton Walker, appearing for Acme Freight Lines, Great Southern Trucking Company, Central Truck Lines, K & L Transportation Company, Southern Motor Carriers Rate Conference, Cooper Truck Lines, Blue's Truck Lines, Holstein and Son, Goodall Brothers Truck Line.

Mr. Bliss: J. A. Bliss, Jacksonville, Florida, appearing for St. John's River Line Company and Tamiami Trail Tours, Incorporated.

Examiner Yardley: Mr. Bliss, are you appearing as an attorney in both of these cases, or are you appearing as an official of the company in one case and as an attorney in the other case?

Mr. Bliss: Since I signed the petition I presume I am acting as an attorney in both cases, or as a licensed practitioner, and not appearing separately for either party.

Chairman Matthews: Are there any other appearances?

Mr. Roland: H. C. Roland, appearing for the Union Bus Company. We have no written petition of intervention to submit at this time.

Examiner Yardley: Will you file one?

[fol. 1110] Mr. Roland: If it is required in these cases I will file one later today.

Examiner Yardley: You don't know what your position is at this time?

Mr. Roland: No sir.

Mr. Walker: Mr. Chairman, I discussed these cases with Mr. Roland and the president of his company. He intends to protest certain things, and should have filed a petition and will get one up in order to file it after the noon recess.

Chairman Matthews: It will be understood on the record that these cases are consolidated for hearing.

Examiner Yardley: Has everybody appearing here been admitted as an attorney practicing before the Commission.

(All those appearing stated that they had been admitted to the bar of the Commission.)

Mr. Abeles: Mr. Chairman, before action is taken on the petition for intervention, I would like to make this statement: There are some dozen or more petitions by various truck lines which state in general terms that the petitioner is interested in the subject matter of this proceeding. I assume, and I think it is fair to assume that many of the companies seeking to intervene in this proceeding have the locus of their operations far removed from the routes involved in these applications. It is of course necessary at this stage of the proceeding for us to determine whether [fol. 1111] or not the petitioners or any of them other than those operating along the routes applied for have such interest as to warrant their intervention under the rules of the Interstate Commerce Commission, and I should like to file objections to the acceptance of these petitions, and any order permitting the interventions which are sought, unless and until the interest of the petitioners is shown as of record. I have had experience before with wholesale petitions for intervention by parties, who, as the case developed, have shown that they have not even the remotest interest in the case. At the same time they have been allowed to cross-examine witnesses with resulting delay in the proceeding, confusing the issues, and I should like to request Mr. Walker at this time, if he can to state for the edification of the board and the information of counsel for the applicant just what interest each of these petitioners whom he is representing may have in these cases, and

I make a similar request upon counsel of other intervening petitioners.

Mr. Walker: Mr. Chairman, I might state to Mr. Abeles that if he cares to read the petitions for intervention he will see allegations of interest. It is true that a number of these truck lines do not operate over the same route for which the applications are made. However the Interstate Commerce Commission, as Mr. Yardley doubtless knows, and also Mr. Matthews, has recognized a general [fol. 1112] interest. For instance, this Southern Motor Carriers Rate Conference is an organization not for profit, and does not operate truck lines at all, and yet the Interstate Commerce Commission, in the case of Philip M. Barzene, which was decided on May 13, 1937, states that the Middle Atlantic States Motor Carriers could and were permitted to testify. That case will be found in 2 MCC 47.

There is another case in 1 MCC — I do not recall the style of the case just now, but where that direct question came up on another conference application, and they were permitted to take part in the case. I can supply you with the authority on that possibly when I return home, but this to my mind is sufficient evidence, and it is the latest expression on the subject. It was not even contested, but they were allowed to appear, not only they, but also a State carrier.

Mr. Abeles: Mr. Chairman, I wish to make a statement now for the record that I have no objection to the intervention by the Southern Motor Carriers Rate Conference, or any other organization representing carriers.

Chairman Matthews: They represent motor carriers in all this territory, do they not?

Mr. Walker: Just generally. They represent no one particularly, because there are none over a certain portion of this territory. For instance, over the territory from Live [fol. 1113] Oak to River Junction, there are no carriers operating that I know of.

Mr. Abeles: Mr. Walker, do you have a list of the members of the Southern Motor Carriers Rate Conference, or to put it differently, are the specific motor carriers who are intervening in this case members of the Motor Carriers Rate Conference?

Mr. Walker: Some are and some are not.

Mr. Abeles: I will state again that I have no objection to the intervention of the Southern Motor Carriers Rate Con-

ference, if the Board please. I think that is a convenient device, and it is followed by the railroads in this and other cases, that is, representation by an organized body. But what I am objecting to is the specific intervention of motor carriers, who, so far as I know, have not the remotest relationship to the operation proposed in these applications, and I think it is going too far afield, unless they can establish first and as a prerequisite of their right to intervene, the interest which they have in the proposals here under consideration.

Mr. Walker: In regard to the specific ones——

Chairman Matthews: Perhaps Mr. Abeles can specify the specific ones that he has in mind, and then Mr. Walker can make his explanation.

Mr. Abeles: I will be glad to do that. I do not want to [fol. 1114] delay this proceeding any more than is necessary, and I had hoped that we could get Mr. Walker to do that.

Mr. Walker: I can explain it in short. Each one of these motions set up, in the cases of the contract carriers mentioned, that they operate over the identical route. In the case of Acme, and K and L, Great Souther, Tamiami Trails and St. Johns River Line, they are directly interested by serving this route by interchange.

Mr. Abeles: Now, if the Chairman please, that is just the point. I am not at all sure that a connecting carrier is in a position to intervene in these proceedings. In fact I know that in analagous cases arising under paragraph 18 of Section One of the Interstate Commerce Act the Supreme Court has held, in the district of West Virginia case, the citation to which I have not before me, that the mere fact that a carrier connects with another carrier who has a direct interest in the proceeding does not warrant the intervention by the connecting carrier. I suppose that if all possible physical routes were considered, every sporadic movement of traffic, that if the position just stated by Mr. Walker is sound, that he could bring into this proceeding every motor carrier in the United States.

Examiner Yardley: Would they have an interest if the Seaboard Air Line were to be granted a certificate and should then refuse to participate in through rates with [fol. 1115] the various truck lines that do not parallel the proposed operations?

Mr. Abeles: I don't think so, I don't think they would have the interest which is required under the rules of the Commission. In other words, their case is represented by the competing carrier with which they connect.

Examiner Yardley: Suppose you make a motion to strike, and let Judge Matthews take it under advisement.

Mr. Abeles: Yes, I move that the petitions of intervention filed by all motor carriers not actually operating over the route for which authority is requested in this application, be stricken. I cannot state just which ones those are now, because the evidence has not developed it, that is, the physical operations, but I make that motion to be acted upon after it has been developed which carriers operate over these routes.

Chairman Matthews: It does not appear in the record yet that the petitions have been accepted, but we will consider that they have been accepted, and take the motion under consideration.

Mr. Walker: Mr. Chairman and Mr. Examiner, there are a few points that I would like to have in the record by way of argument on that. If no carrier can object to another carrier seeking a route unless he actually runs along the route, there has got to be a start somewhere in initiating service on that route. One man comes in and wants that [fol. 1116] route, and there may be others who want to operate over the same route, and they certainly have a right to come in if they operate in that general territory. They certainly have an interest in seeing what carrier gets in there. Some of them may want to get in there themselves, and some do not.

The second point is this: The Central Truck Line has been for many years a common carrier between Jacksonville and Live Oak, which is a route identical with that which is sought in request sub. No. 9. Central Truck Line interchanges with every truck line here protesting. We also know that the Seaboard Air Line Railway will not interchange with them, they will not do so on their rail line, and they probably will not do so on their truck line. Now, we have an interest, and a financial interest in seeing to it that no line is destroyed by competition with which line we might interchange over this route; so I contend that in our motions here for intervention we do show a direct interest when we say we have a direct interest by interchange.

Chairman Matthews: All right.

Mr. Bliss: Mr. Chairman, I would like to point out that the applicants are the receivers of the Seaboard Air Line Railway, who do operate other lines within the State of Florida, which do parallel the lines of the interveners. The applicant is proposing a novel arrangement which if granted without opposition might make it easier to install new lines [fol. 1117] which do directly compete with some of these interveners.

Chairman Matthews: All right, go ahead with the proceedings.

Mr. Walker: Mr. Chairman, at this time in the proceedings I have a motion to make, as follows: "Now comes the Central Truck Lines and moves the board for a continuance of this hearing on the grounds that it is common knowledge that labor unrest and actual strike conditions exist in the State of Florida and the State of Georgia, and that is is accordingly impossible for the Central Truck Lines, which is more vitally concerned than any other carrier here in protecting its own line from being paralleled, to produce its witnesses, or to be present at this inquiry. We think that this Board should take judicial notice of what is common knowledge, as has been said by our own Supreme Court and the Supreme Court of the United States, and continue and postpone this case until such time as labor conditions sufficiently improve to enable the truck interests who are directly interested to produce its witnesses here; and I would suggest a continuance for thirty days if that might be in order."

Mr. Abeles: If the board please, of course I object to that motion. While it is perhaps unfortunate that at the date of this hearing there are certain labor conditions obtaining at this time, but the applicants have gone to considerable trouble and expense and expenditure of time to obtain [fol. 1118] their own witnesses, who are busy men, and they come here at some sacrifice to testify. I cannot see from the statement made by Mr. Walker that the mere absence of employees who may be on strike should prejudice their case to any substantial degree, because I suppose their officials would be the witnesses who could best present their case. At any rate, I think the motion is intangible, and we should most seriously object to any postponement of the hearing at this time.

Mr. Walker: Mr. Chairman, I might say this to Mr. Abeles that I am perfectly willing to withdraw the motion for continuance if the Seaboard Air Line is willing to stipulate that the Central Truck Lines is an existing common carrier, both intrastate and interstate, between Jacksonville and Live Oak, and are ready, able and willing to meet the general needs of that territory in common carrier motor truck service. That is all that we would expect to prove by Mr. Allen. If they are willing to stipulate or admit that, I will not insist on the continuance.

Mr. Abeles: Of course I would not be willing to stipulate anything in regard to their ability or willingness to provide good service in this territory at all. I might be willing to stipulate that they are operating in this territory, provided we would have some showing of the service which they do perform; but in the absence of some such showing I would not be willing to stipulate anything.

[fol. 1119] Mr. Walker: Of course we can do that later on. I realize that this applicant has been to some expense in coming here, and we do not want to delay the hearing, but if you could stipulate what is a known fact, that they are operating under certain schedules, it might be helpful.

Mr. Abeles: Haven't you a witness here who can testify to what service they are performing?

Mr. Walker: I cannot show that by an official of the company. I have no official of the Central Truck Lines here. I can put on Mr. Bliss, who is an official of the St. Johns River Line Company, and he knows and can swear that the Central Truck Lines have service there, if there be no objection to it. He is not the best witness of course, but I have no witness of the Central Truck Lines here, because of the acute strike condition they could not leave Tampa to come to this hearing.

Mr. Abeles: I certainly have no disposition to take undue advantage of the existing conditions, and I am willing to accept Mr. Walker's statement at its face value, that the attendance of material witnesses has been prevented, and yet in protecting the interests of the applicant in this case I am still at a loss as to how to accommodate him. I would be quite willing to do that if possible. I simply want some statement from an authoritative source of what service the company which he represents is performing, and I must [fol. 1120] confess that I do not feel quite willing to accept

a statement of a witness from another company. I think you can understand my position on that.

Mr. Walker: Yes, I can understand your position, and I could put the Secretary of the Railroad Commission on the stand. The only difficulty I will have is to prove whether he is qualified under the Interstate Commerce Commission under the grandfather clause.

Chairman Matthews: The board will overrule the motion, and if necessary a further hearing can be had.

Mr. Walker: If I understand the ruling then, Your Honor, we would have the right to petition you for a further hearing in the future.

Mr. Abeles: In response to that action, Mr. Chairman, I would like to say on behalf of the applicant that we will most vigorously resist any further hearing in these cases, because the proceedings have already been considerably delayed through no fault of anyone, and in view of the congested docket of the Interstate Commerce Commission we don't know when we will be able to get action in these cases, which we are most anxious to have at the earliest possible moment, so I think it is only fair to state my position at the present time, and that is that we will oppose any further hearing of these cases.

Examiner Yardley: What do you mean by considerable [fol. 1121] delay? The application was filed on August seventh?

Mr. Abeles: I do not mean that the hearing has been delayed, but from our experience we know that the condition of the Commission's docket in these cases will impede the progress of the case through the Commission far more than in cases of other kinds.

Chairman Matthews: All right, you may proceed.

Mr. Walker: Come now the protestants and move (1) to dismiss this application or postpone the case until such time as a board may be appointed having jurisdiction of the case.

(2) That the present board, composed of one representative of the State of Florida does not under the Motor Carrier Act have jurisdiction to hear and determine the matter of interstate commerce involving necessarily transportation by and through one or more states.

(3) That application sub numbers 9 and 10 of this docket are merely two of some eight or ten coordinated applications throughout the Southern States brought by the Seaboard Air Line Railroad Company for motor carrier

freight service; that as such a board composed of representatives from each state, or in the event of more than three states being involved by an Examiner or special board; is the only board having proper jurisdiction of this case, and therefore any action by this board now sitting is illegal. [fol. 1122] I might say that that is no reflection on Major Matthews, for whom I have the highest esteem, but I am making that point, and I think it is a good one.

Chairman Matthews: The motion will be taken under advisement.

Mr. Abeles: I don't know whether the joint board wishes to hear from me on that subject or not.

Mr. Bliss: Mr. Chairman, the St. Johns River Line Company does not join in that motion.

Chairman Matthews: The ruling of the board is that we will take it under advisement until we have heard Mr. Abeles.

Mr. Abeles: I will,—I would like to ask Mr. Walker whether his motion is founded on the theory that the applicants are attempting to cover motor carrier service covering more that one state.

Mr. Walker: The motion speaks for itself.

Mr. Abeles: I am not entirely clear what the motion does speak for, so I am asking just what you mean by it, because I cannot follow it as you stated it, and my question is whether your motion is based upon the theory that in these cases we are attempting to set up continuous motor carrier operations in more than one state.

Mr. Walker: There are three grounds for the motion. My first ground is that by virtue of its being an interstate application covering these two routes in Florida, that makes [fol. 1123] it obvious that your haulage will cover more than one state.

Numbers two and three raise the point that you have something like ten or twelve motions for routes throughout the south, in Virginia, South Carolina, North Carolina, Tennessee and Alabama, and that they are all with the intention of establishing coordinated motor truck service throughout the entire south and paralleling your entire railroad.

Mr. Abeles: However you are not contending are you that through these applications in conjunction with other existing motor carrier services performed by the applicant,

that a continuous motor carrier service covering more than one state would be sought for.

Mr. Walker: I used the word "coordinated."

Mr. Abeles: But you are not contending that there is any continuity of motor carrier service which crosses the state boundary lines, are you?

Mr. Walker: I have not in this motion.

Mr. Abeles: Mr. Examiner, I will simply reply to the motion by stating that similar motions have been heretofore made in other proceedings in which your applicants are interested; that the question has been raised and submitted to the Commission in Docket MC 86687 sub numbers 1 to 7, and the question will presumably be decided in those proceedings. They are now before the joint board and a recommended report has not yet been made in those cases. [fol. 1124] Chairman Matthews: The board will take the motion under advisement.

Mr. Kitchens: Mr. Chairman, I arrived a little late, but I want to file a petition of intervention on behalf of the L. & L. Freight Lines, who have a substantial interest in these proposed operations, because they parallel them in many instances, and the L. & L. Motor Lines wish to operate into Jacksonville and connect with certain motor carriers into this section.

Mr. Abeles, may I ask a question of you?

Mr. Abeles: No, not yet. I would like to state to the board that the objection which I have interposed to the petitions of intervention heretofore offered applies to this petition of the L. & L. Freight Lines which I understand does operate between Live Oak and these points west of Live Oak to Marianna.

Mr. Kitchens: Mr. Abeles, may I ask you whether or not you are confining this application particularly the registration of certain routes obtained by legislative action, and not for public convenience and necessity for the State of Florida?

Mr. Abeles: I am going to make a statement to the board on that question.

Mr. Kitchens: It is relative to the motion which I have made. You distinctly brought that out from Mr. Walker. [fol. 1125] I wanted it clear in my mind, so I am concurring in Mr. Walker's motion and adding additional grounds.

Mr. Abeles: I am not sure that what I am about to say

is responsive to your question. At any rate, I would like to take this opportunity of informing the joint board that the proceedings before it now are applications for certificates covering new operations between Jacksonville and Live Oak, Florida, and between Live Oak and River Junction, Florida. In both cases we have filed also with the Commission application for registration of an operation conducted in state service. These applications for registration are on the theory that since the service involved in the applications is located wholly within the boundaries of a single state, and do not in any instance reach or cross state lines, that that provision of Section 206 of the Federal Motor Carrier Act which exempts from specific requirements operations wholly within a state, exempt the services for which authority is here sought, from certificate requirements. I might add that that question is also before the Commission in Docket MC 86687 and sub numbers 1 to 7, and will be presumably decided in those cases.

Examiner Yardley: Do I understand your position to be that in the event the Commission or the Joint Board should deny your application for a certificate, that you will then claim the right to operate over these routes by virtue of [fol. 1126] registration?

Mr. Abeles: Subject of course to the Commission's decision on that question, and the subsequent decision as to whether or not we felt there was sufficient doubt about it to litigate the Commission's decision. What our action would be in the event of an adverse ruling under the application for a certificate, and also under our contention that no certificate is required, I would hesitate to say at this time. Do I answer your question?

Examiner Yardley: Well, yes.

Mr. Abeles: I want to make my position clear.

Examiner Yardley: There is a question in my mind as to whether the applicant has subjected itself to some contradiction in its position—to some inconsistency growing out of the fact that it has filed this application with the interstate commerce commission.

Mr. Abeles: We have accompanied our application for certificate with the reservation that no certificate is required. If you have the docket there, Mr. Examiner, you will find that reservation in the application itself, pointing to the fact that we have concurrently filed a certificate for

registration, and that the application for a certificate is merely out of an abundance of caution in the event we are overruled in the certificate for registration.

Mr. Kitchens: May I inquire of learned counsel as to [fol. 1127] whether or not this — an extension of an operation, and if it is not an extension of an operation where will this interstate case be derived from inasmuch as the said applicant does not connect with or have joint or through rates and routes with any other common carrier truck lines.

I move at this time that the applicant be compelled to take a position, and to elect whether or not he is going to prove public convenience and necessity for a certificate, or attempt to prove public convenience and necessity for a certificate, or whether or not he is merely relying upon registration? I think this is a proper motion before this board at this time. We protestants would be backed up to the wall, so to speak, in trying to counteract the proof in support of the Seaboard Air Line's case if they were not forced to elect. It is very difficult, as the board knows, to try to rebut testimony from two different angles.

Mr. Abeles: If the chairman please, with all due deference to Mr. Kitchens, I think we are wasting time here because the only thing before this board is the application for a certificate under Section 206 of the Act. I have stated the position of the applicant to be that no certificate is required, but so far as the issues involved in this proceeding are concerned, on the merits of the case, they are confined to the application for a certificate, and the question of public convenience and necessity is necessarily involved in such a [fol. 1128] proceeding.

Chairman Matthews: The motion will be overruled.

Mr. Kitchens: May I concur in the motion made by counsel, Mr. Walker, for the intervening motor lines?

Chairman Matthews: Yes.

Mr. Walker: If the board pleases, now comes the protestants, and move to dismiss this application on the grounds that it affirmatively appears that the applicant is in the hands of a receiver, and it does not affirmatively appear from the application that there is any order of court authorizing these receivers to transmit this application.

Further, there is no showing that the Seaboard Air Line Railway has any authority under its charter to engage in

motor truck service. I might say that that is not an idle motion. As we all know, receivers are officers of the court, receivers cannot spend any money or expend any funds except by order of the court, nor can he enlarge the operation without an order of the court. The duty of a receiver is to get in the assets for the purpose of paying off indebtedness. It is only when he has an order of the court that he can go out and make any further investment, and until it affirmatively appears that there is an order of court authorizing this applicant to make this application, it is absolutely improperly made and in defiance of the law. If they have such an order and will submit it in due course, all right; otherwise I will renew my motion at some other [fol. 1129] time.

Mr. Abeles: Mr. Chairman, in brief reply to that motion I would like to say this: First of all we hold with regard to the charter power of the applicant that the Commission has no duty or power to investigate that. That is a matter for the courts to decide.

Secondly, with regard to the power of the receivers as such to conduct this motor carrier service, I think that the answer is identically the same. If they have no such power, then it is the function of the receivership court to object, and not the Commission or any of these protestants in this proceeding. However, I shall be very glad if the joint board, or the Examiner of the Commission feels otherwise, to produce a certified copy of the court order authorizing the receivers to engage in operations of this character.

Mr. Walker: Are you willing to submit a certified copy of the charter of your railroad?

Mr. Abeles: I would be very glad to do that except that I think that the charter of the present Seaboard Air Line Railway comprises some fifteen different underlying charters, and I believe to comply with your request would so encumber the record that it would only inject confusion.

Mr. Walker: I might say here that I cannot say what the practice is before these joint boards and the Interstate Commerce Commission. However, it has been the practice [fol. 1130] before the State Commission, as Major Matthews well knows, if any motor carrier applicant coming before this commission—he submits a certified copy of his charter. That is invariably done. Judge Oven has in fact

created that precedent. He has invariably demanded that a charter be produced to show what authority the motor carriers have. I have had it a dozen times. That has been the rule of the Commission, but I do not know what the rule of the Interstate Commerce Commission is, but when it is objected that the authority must be shown, he must produce it.

Mr. Kitchens: Mr. Chairman, I think—I might be mistaken—that on BMC form 8, which is the correct form for this application to be presented to this board, I think that such is the requirement of the application, that a certified copy of the charter be attached thereto, likewise a financial statement should be contained within the application. If that has not been complied with then I don't think this applicant is properly before this board, and at this time I wish to concur on behalf of the L. & L. Freight Lines, Inc., and the R. C. Motor Lines, Inc., in the motions heretofore made by Mr. Walker.

Further, I move this honorable commission that its said hearing be continued until such time as counsel for the railroad can produce from the federal courts in which the receivership rests, proof that it has from said court per-
[fol. 1131] mission to institute the filing of this application on the extension of the Seaboard Air Line Railway Company's route. I think a continuance should be granted at this time in order that the protestants may have opportunity to examine it.

Chairman Matthews: The board is going to overrule the motion for a continuance. I am rather inclined to think that you are raising questions here that haven't anything to do with it, but so far as the motion affects the validity of the application, we will take that part of it under advisement. We will overrule the motion for continuance.

(Discussion had off the record.)

Mr. Abeles: Will the board be prepared to rule on that motion prior to the termination of this hearing, because it is rather important?

Examiner Yardley: Are these same questions up in the other cases?

Mr. Abeles: No, the requirement of a charter right showing is not involved in those previous cases.

Mr. Kitchen: How about the authority from the federal court?

Mr. Abeles: No, that was not raised either. I can very readily and quickly supply that authority. There is a specific order of the court——

Examiner Yardley: You state that you do have it?

[fol. 1132] Mr. Abeles: I do, most emphatically.

Examiner Yardley: That may be filed within ten days.

Mr. Kitchen: If he supplies the certified copy of his charter, and his charter does not give him authority to run a truck line, I want to be in court objecting to it. Somewhere in the record there should be a certified copy of the order of the court and a certified copy of the charter. If he can supply that, and is willing to supply one of us on this side with a copy of it, that is all we ask.

Mr. Abeles: I object to a requirement that we furnish copies of the charter of the applicant, not because I have any apprehension as to what it would show, but because the Seaboard Air Line is a consolidated corporation with constituent companies dating away back one hundred year- or more, and the present charter of the consolidated company would comprise all of the charter powers of the predecessor corporation. Now, to supply this record with some fifteen or twenty charters from which the question of the charter power of the present corporation can only be derived by a searching exploration of every one of them, I think is an unreasonable request.

Chairman Matthews: Since Counsel for Applicant has stated that they have the authority from the federal court to engage in truck operation, the Board is going to overrule the motion for a continuance, and overrule the motion for a filing of a copy of the charter; but the board does rule [fol. 1133] that a copy of the authority from the federal court should be supplied for the record within ten days.

Examiner Yardley: With a copy to all parties.

Chairman Matthews: Yes.

Mr. Walker: Bear in mind, Mr. Chairman, that Mr. Abeles has stated that he did have authority from the court, but he has never yet stated that the charter of any of his fifteen consolidations ever gave him the right to run a truck line. We are entitled to that.

Mr. Abeles: I can state that.

Mr. Walker: But it is a legal opinion, even if you state it. I don't see why there should be any objection to giving us a copy of the charter, or an extract from the charter

showing that they have authority to operate a motor carrier service. The Act requires that they do that.

Mr. Abeles: I don't agree with you. Can you point out the provision of the Act which requires that.

Mr. Walker: I know it has been the custom to do it.

Mr. Abeles: It has never been required and it has never been done. I would be glad to do that except for the fact that I doubt whether we could find anything but basic record copies of every single charter that underlies the present Seaboard Railway System. I know that we have been asked for copies of those charters for other purposes. If it was simply a matter of convenience I would be glad to accom- [fol. 1134] modate Mr. Walker, but it is not that, it is a very difficult task, if not an impossible one, and in view of our position that the charter power of the applicant has nothing to do with these proceedings I will have to object to complying with that.

Mr. Walker: It is certainly ultra vires if you have no such power.

Chairman Matthews: The board has ruled.

Mr. Kitchen: I again move that the said application be dismissed, in that the said applications as heretofore filed by the applicant, and which is in possession of the Interstate Commerce Commission, the applicant has fully indicated and/or refused to comply with the questions as heretofore set out in Form BMC 8 in that it states "If applicant is a corporation furnish the following information".

Mr. Abeles: Where are you reading from?

Mr. Kitchen: I will show it to you, it will be much easier.

(Shown.)

The page you will see is blank. I also call attention that the applicant is not a corporation. For whom are these trustees or receivers acting?

Mr. Abeles: I don't want to prolong this discussion, Mr. Chairman, but the information to which Mr. Kitchen is pointing is with regard to corporate organizations, and the applicants here are receivers. Their authority to act as [fol. 1135] receivers has been filed in the application, and I think that that is the answer to the motion.

Mr. Kitchen: Surely counsel is not here for the purpose of stating that this application is not made for the benefit of the Seaboard Air Line Railway but made for Mr. Powell

and Mr. Anderson as individuals or receivers. If they are receivers, they are receivers for whom? A corporation, a railroad corporation, the Seaboard Air Line Railway and it is no more a privileged character in the United States than myself or counsel for the other protestants, any contract carrier, even a poor little truck man is entitled to that information.

Mr. Abeles: Are these not matters for argument on brief? And are we not delaying the proceeding unnecessarily by these discussions?

Chairman Matthews: The board will overrule the motion.

Mr. Abeles: We are ready to proceed. But, Mr. Chairman, I would like to ask the indulgence of counsel for the protestants to the extent of placing on the stand an operating witness who will describe the nature and scope of what we are proposing to do, and then to request the withholding of cross examination until certain other witnesses who have come here at some sacrifice have taken the stand and been cross-examined, so we can relieve them. Is that satisfactory?

Mr. Walker: I understand that you wish to have us with-[fol. 1136] hold any cross examination of your operating witness at the time he takes the stand?

Mr. Abeles: Until we have been able to place these local witnesses on the stand.

Mr. Walker: Why don't you put the local witnesses on first?

Mr. Abeles: Because I want to get into the record what we are proposing to do, and then to put the witnesses on the stand to testify whether they are in favor of it.

Mr. Kitchen: On behalf of the two clients which I represent I might say that usually we would be very glad to favor you, we are glad to favor you today, except that it would be my interpretation that such a witness would be perhaps a technical witness, and to submit the counsel for the protestants to waiting until after the local witnesses are heard, and to have to remember such testimony as was given by your first previous witness would be no doubt an injustice to expect us to remember such testimony for such a period of time.

Mr. Abeles: Mr. Kitchen and Mr. Walker, I have written copies of the testimony that will be adduced by our first witness.

Mr. Kitchen: Then there is no objection from me.

Mr. Walker: He will testify from a prepared statement?

Mr. Abeles: That is right.

[fol. 1137] Mr. Walker: And Mr. Bliss and we may have copies of that prepared statement?

Mr. Abeles: Yes, I have about three extra copies here.

Mr. Bliss: No objection.

Mr. Abeles: I will call Mr. Parsons.

T. W. Parsons was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Parsons, please state your name, residence and occupation.

A. T. W. Parsons, Jacksonville, Florida, Assistant General Manager, Southern District, Seaboard Air Line Railway.

Q. How long have you occupied that position?

A. Five years.

Q. How long have you been with the Seaboard in various capacities?

A. With the exception of a short duration since 1903. Superintendent in Florida from 1912 to 1916; general superintendent from 1924 to 1931.

Q. Over what territory do you have supervision?

A. My supervision extends from just north of Jacksonville, including all of Florida and the line from Jacksonville to River Junction also from Tallahassee to Bainbridge.

Q. Then you are thoroughly familiar with operating conditions in the territory covered by the Jacksonville-River Junction Line?

[fol. 1138] A. Yes sir.

Q. Will you now describe the services which we are proposing to establish in these proceedings?

A. We are proposing to establish station to station interstate truck service between Jacksonville and Live Oak, and Live Oak to River Junction. We already have a truck operation on these same routes handling intrastate traffic only.

Q. Have we received a certificate for such intrastate operation from the Florida Railroad Commission?

A. Yes.

Q. How long has that intrastate service been in operation?

A. Since July 6, 1937.

Q. Do I understand that if the interstate authority which we are here seeking is granted that we will use these vehicles now operating in intrastate service to transport the interstate traffic?

A. Yes.

Q. I hand you a blueprint map and ask you to state whether or not that blueprint correctly shows this operation?

A. Yes, it is shown in red on the map.

Q. Does the route which will be traversed by the proposed service substantially parallel the line of the Seaboard Air Line Railway between Jacksonville and River Junction?

A. Yes sir, it shows the proposed line of operation from Jacksonville to River Junction except where the pencil lines [fol. 1139] indicate a digression into and out of Aucilla, and also from Monticello to Drifton and back out to Road No. 1.

Mr. Abele: Mr. Chairman, we offer this map in evidence as applicant's exhibit No. 1.

(Exhibit 1, Witness Parsons, received in evidence.)

Q. Do we propose to serve any station not already reached by the railroad?

A. No. Our service contemplates only the transportation between rail stations of LCL shipments offered to the railway or its rail connection and will not serve any point not reached by the railroad.

Q. Then I understand that our proposed service will be purely auxiliary or supplementary to our rail service?

A. That is correct.

Q. What is the approximate one way mileage of the two routes?

A. The highway mileage between Jacksonville and Live Oak is approximately 85 miles, and between Live Oak and River Junction is approximately 142 miles.

Q. Will you state now generally the purpose which we expect to accomplish through the inauguration of these services?

A. Primarily the purpose of the proposed services is to improve the handling of interstate LCL shipments along

the proposed route. Incidentally this service is now provided for shippers and receivers of intrastate traffic and if [fol. 1140] interstate authority is granted, interstate and intrastate shipments will have equal service. At the present time the intrastate movements are being given superior handling to some of the smaller stations.

Q. What other benefits do you expect to result from these services?

A. We expect to advance the movement of our through trains and give the receivers and shippers of carload freight carried on these trains earlier deliveries. We will accomplish certain savings in fuel by eliminating train stops and reduce the number of cars required for train service and will advance the delivery at River Junction of LCL freight consigned to points on the Appalachicola Northern Railroad.

Q. Will you now state the freight train service in operation over this route?

A. Train No. 83, a through train which however, works local between Live Oak and River Junction, is scheduled to leave Jacksonville at eight p. m. daily, and is scheduled to arrive at River Junction at eight a. m. the following morning.

No. 85 is scheduled to leave Jacksonville at 9:10 a. m. daily, and is scheduled to arrive at Tallahassee at 4:30 p.m. daily, leaves the line between Jacksonville and River Junction at Tallahassee at 5:10 p. m. for Montgomery via Bainbridge, and is scheduled to arrive at Bainbridge at 7:30 p.m.

A local train leaves Jacksonville about 8:10 p. m. This is [fol. 1141] operated as an extra train and does local work setting out and picking up between Jacksonville and Live Oak. It arrives at Live Oak about two a. m. making connection with the LOP&G Railroad at that point, turns immediately leaving Live Oak about 2:30 a. m. and returns to Jacksonville, arriving there about eight a. m.

A through train, No. 82, making the Louisville and Nashville Railroad connection at River Junction is scheduled to leave River Junction at ten a. m. and is scheduled to arrive at Jacksonville at 9:30 p. m. the same day.

No. 84 from Montgomery via Bainbridge is scheduled to leave Bainbridge at 6:15 p. m. arriving at Tallahassee at 7:45 p. m. leaves Tallahassee at 8:15 p. m. and is scheduled to arrive at Jacksonville at 2:30 a. m. the following morning.

Q. Will you state the schedules of the proposed truck service?

A. As I have already stated, this service is now in operation for the handling of intrastate shipments. The schedules are as follows:

Leave Jacksonville 7:00 p. m. arrive Live Oak 11:30 p. m.; leave Live Oak on return movement 12:00 midnight, arrive Jacksonville four a. m.

Leave Live Oak 11:45 p. m., arrive River Junction 6:15 a. m., makes connection with the Appalachicola Northern Railroad which leaves River Junction for Port St. Joe and [fol. 1142] intermediate points in Gadsden, Liberty and Franklin counties at 7:10 a. m. The truck leaves River Junction 11:00 a. m. arrives Live Oak five p. m. One truck is operated daily except Sunday in both directions over each of these routes.

Q. Having stated what the proposed service will be and for what purpose it is to be established, will you now explain how the improvements will be accomplished. For that purpose I wish you would take as an example a specific movement of LCL freight consigned to this territory from an interstate origin and explain how it now moves and how it will move when the interstate truck device is in operation.

A. For instance, an interstate shipment moving through Jacksonville to Monticello, originating out of the state coming to Jacksonville this morning, would go forward on train No. 83, which is scheduled to leave Jacksonville at eight p. m, and will be set out at Drifton at 3:50 a. m. to be picked up by train No. 82 at 2:40 p. m. that afternoon reaching Monticello about 3:30 p. m.

With the proposed truck service this shipment would leave Jacksonville at seven p. m. by truck, and arrive at Monticello at 3:05 a. m. the following morning, advancing the shipment almost 24 hours.

This is also true of interstate LCL westbound movements through Jacksonville for Havana.

Train No. 83 leaving Jacksonville at eight p. m. tonight [fol. 1143] arriving Tallahassee the following morning, is unloaded at Tallahassee, loaded into a local car working between Tallahassee and Bainbridge and does not leave Bainbridge until four a. m., arriving at Havana at five a. m. the second morning out of Jacksonville, whereas if we could handle it by truck, it would leave Jacksonville at seven p. m.

the same day of arrival at Jacksonville and arrive at Havana at 5:10 a. m. the first morning out of Jacksonville, or a twenty-four hour saving.

Q. Is there any substantial business moving outbound from Havana, the service on which would be improved by the use of the proposed truck service?

A. There is less carload interstate freight moving east bound through Jacksonville that is now handled by local freight from Havana at two a. m., arriving Tallahassee at three a. m., leaving Tallahassee on train No. 82 at 1:10 p. m., arriving Jacksonville at 9:30 p. m. It would move on the proposed truck service leaving Havana at 12:20 p. m., arriving Jacksonville at four a. m. next morning, thus advancing the shipment one day.

Q. Can you give an example of the improvement in the service of Less Carload shipments moving into this territory from points beyond River Junction?

A. There is a through car loaded with merchandise at [fol. 1144] New Orleans and one car loaded with merchandise from Pensacola daily except Sunday, which arrives at River Junction at eight a. m. which connects with train No. 82 scheduled to leave River Junction at ten a. m. These cars contain less-carload merchandise which break bulk at Quincy.

These cars contain less carload merchandise for points between River Junction and Tallahassee as well as stations between Tallahassee and Jacksonville and also for points on the Bainbridge line.

A shipment which is consigned, for example, to Havana, now leaves River Junction at ten a. m. on train No. 82 and is carried to Tallahassee where it is transferred to the local train operating from Tallahassee and Bainbridge, leaving Tallahassee at about four a. m. and arriving at Havana around five a. m. the morning following its receipt at River Junction. By use of the truck, this shipment can leave River Junction on No. 82 at ten a. m. and be unloaded at Quincy where it will be picked up by truck at 11:45 a. m. arriving Havana at 12:20 p. m. the same day, thereby saving almost twenty-four hours in delivery.

Q. How about a shipment consigned to a point near Jacksonville, such as Lake City? Would there by any improvement in the handling of less carload shipments coming

from points beyond River Junction consigned to that station?

A. A less carload shipment for Lake City, received in [fol. 1145] these cars, would as just explained, be set off at Tallahassee by train 82, picked up by train No. 84 and carried through to Jacksonville, arriving Jacksonville 2:30 a. m. the following morning. It would then be returned to Lake City in local freight leving Jacksonville about eight p. m. the following night, arriving Lake City around one a. m. the second morning following its receipt at River Junction. By use of the truck the shipment for Lake City could be unloaded at Tallahassee on arrival of train No. 82, picked up by the truck at one p. m., reaching Lake City at one a. m. the morning following its receipt at River Junction, or a saving of one day.

Q. Between what points on this route would this same improvement of service be effected?

A. All local points between Tallahassee and Jacksonville except Monticello.

Q. Why do you except Monticello?

A. Train No. 82 is operated via Monticello and would handle such freight direct to that point.

Q. Why can this direct service be provided for Monticello by train No. 82 and not for the other local stations on this route?

A. Train No. 82 carries the important through freight and perishables for Jacksonville proper, and through connections at Baldwin, for points north and south. We can- [fol. 1146] not use Train No. 82 for local service between Tallahassee and Jacksonville and still make these connections and avoid violation of the sixteen hour law.

Q. Will the handling of less carload business by the proposed truck service benefit carload shipments moving over this route?

A. Yes. For example, our local train between Jacksonville and Live Oak now leaves Jacksonville about 8:10 p. m., and leaves Live Oak on the return trip at 2:30 a. m. and arrives at Jacksonville about eight a. m., which is usually too late to be weighed and catch a switch engine for delivery to industries at Jacksonville — the early morning. By relieving this local train of the handling of less carload business its arrival at Jacksonville will be advanced to permit earlier placement of cars on industrial tracks along the Belt Line at Jacksonville, which move-

ments require as much as a 12 to 15 mile switching in a congested area.

Q. In connection with the present movement of this local business, to what extent are deliveries to Jacksonville industries now delayed would you say—how late do they arrive there at times?

A. Well, carload shipments for Jacksonville arriving there as late as eight o'clock are invariably placed that afternoon. Cars arriving at five o'clock or earlier are placed that same morning.

[fol. 1147] Q. And I understand that by advancing the schedules of these local trains morning deliveries will be assured?

A: Yes sir.

Q. Will any improvement in service be effected through the establishment of the proposed truck service in the delivery of less carload shipments originating at such points as Birmingham, Montgomery and Atlanta?

A. Birmingham, Montgomery and Atlanta are jobbing centers of importance to the territory to be served by the proposed truck operation. In addition to which a large volume of merchandise freight from western cities, such as Chicago and St. Louis, moves through Birmingham and Atlanta destined to this territory, such freight being loaded at Birmingham and Atlanta in the package cars consigned to Tallahassee.

In order to provide better service for this traffic we at present operate through daily package cars from these origins over connections and the Seaboard to Tallahassee, breaking bulk at Tallahassee. At present, these shipments consigned to points between Tallahassee and Live Oak are forwarded from Tallahassee by train No. 82 leaving Tallahassee at 1:10 p. m., arriving at Live Oak at 5:10 p. m. and are then picked up by No. 83 at one a.m. and delivered to destination points early in the morning. By the use of the proposed truck service, these shipments would be picked up at Tallahassee at 12:50 p. m. of the afternoon [fol. 1148] following their arrival and would be delivered to local points between Tallahassee and Live Oak during the same afternoon instead of the following morning by train.

Q. Will any savings in expenses be effected by the proposed truck service?

A. Yes, it will reduce the number of cars required for the handling of less carload merchandise on this line with an estimated annual saving of approximately $2,000.00, and in addition, will save per diem payments or earn per diem on other lines to an amount of approximately $1,200.00 per year, or a total saving of between $3,000.00 and $3,500.00.

Q. Will there be any additional cost incurred in operating the existing truck service for interstate transportation?

A. No. There is no difference in the cost of operating a truck carrying intrastate traffic alone and both interstate and intrastate, and since we already operate the trucks for the transportation of intrastate traffic there will be no increase in cost for handling interstate traffic in these trucks.

Mr. Abèles: Mr. Chairman, that is all for this witness at the present time.

(Witness temporarily excused.)

(Short recess.)

Mr. Abeles: I will call Mr. Earp.

[fol. 1149] CURTIS EARP was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Earp, state your name, residence and occupation.

A. My name is Curtis Earp. My home is in Greenville, Florida, and I am at present engaged in the business of general merchandising.

Q. At Greenville, Florida?

A. Yes, sir.

Q. Mr. Earp, will you state for the record what benefit you will enjoy if the interstate motor service which is proposed in this case is established?

Mr. Kitchen: I would like to ask one qualifying question. Does he know what service is offered? You have not brought that out.

Mr. Abeles: You have heard the testimony of Mr. Parsons, have you not?

The Witness: Yes, sir.

Q. Then you are familiar with what is proposed in this case?

A. Yes, sir.

Q. Now, will you proceed to explain what benefits that proposed service will be to you?

A. Well I will get quicker deliveries, and in most cases [fol. 1150] we try to have in our goods for weekend sales.

Q. Then a 24 hour advance in delivery is of importance to your business, is it?

A. Yes, sir, it is.

Q. Now, from your experience in the general merchandising business, Mr. Earp, can you state whether that is generally true of merchants who are engaged in that business?

A. Yes, sir.

Q. Can you explain a little more fully why it is necessary for you to receive your goods as promptly as possible.

A. Well it is necessary because of the fact that in the business of general merchandising there is quite a bit of competition, and we try to get our goods in and get the goods marked up ready for weekend sales, because in a small town like the town I live in, Friday and Saturday are really the business days.

Q. Then you feel, that if the improved service which has already been described is furnished to you it will be a distinct advantage to you in the conduct of your business?

A. I think so, yes, sir.

Mr. Abeles: That is all.

Chairman Matthews: You may cross examine.

Cross-examination.

By Mr. Kitchen:

Q. Mr. Earp, you live at Greenville, Florida?

[fol. 1151] A. Yes, sir.

Q. And you are in business there?

A. Yes, sir.

Q. In the mercantile business?

A. Yes, sir.

Q. Just what comprises that mercantile business? I am rather hazy on what goes on in a little town?

A. Well, I handle groceries, dry goods, and also have a market.

Q. It is almost what you term a general store, is it not?

A. Yes, sir.

Q. Now, how do you get your goods? Do you get them from Atlanta, Georgia?

A. I don't trade in Atlanta, Georgia.

Q. You don't trade in Atlanta?

A. No, sir.

Q. Well, who do you get your merchandise from, say in Columbia, South Carolina?

Mr. Abeles: Mr. Chairman, just a moment. I think the form of these questions is entirely improper. If Mr. Kitchen wants to know where he gets his goods from let him ask where he gets them, and not suggest that he gets them from some specific place.

Mr. Kitchen: That is what I want to find out. I have reasons for these specific questions.

[fol. 1152] Mr. Abeles: Ask him where he gets his goods from.

Q. From whom do you get your goods in Jacksonville?

A. J. H. Churchwell wholesale house, Cumberland and Liberty Mills.

Q. That is in Jacksonville?

A. Yes, sir.

Q. You are speaking of Jacksonville, Florida?

A. Yes, sir.

Q. And that is in Jacksonville?

A. Yes, sir.

Q. Do you get anything from Savannah, Georgia?

A. No, sir, I have goods coming in from Charleston, South Carolina.

Q. From Charleston?

A. Yes, sir.

Q. How do those goods come from Charleston?

A. By rail.

Q. What railroad do you use?

A. They come by the Seaboard Air Line Railway from Charleston.

Q. And they are brought into Jacksonville?

A. Yes, sir.

Q. And from Jacksonville they are transported by rail are they not?

A. Yes, sir.

[fol. 1153] Q. That is to Greenville, Florida?

A. Yes, sir.

Q. Do you consider the service now offered by the Seaboard Air Line as being inadequate to your needs?

A. Well, the service is as good, I suppose, as it is possible for a railroad to offer, where it is delivered by rail, but I would say that if they could put on a faster service, that is what we want.

Q. But, if this application for the establishment of truck service was denied, would you be forced to go out of business?

A. No, sir.

Q. It would not affect your business in any form, would it?

A. Well——

Q. You are operating now?

A. Yes, sir.

Q. And successfully too?

A. Yes, I would say so.

Q. But it would not affect you either way?

A. Well, I think it would be better, and it would help the business if I could get a quicker delivery service, because I find there are lots of shipments that I order and sometimes I have to wait one, two or three days for them, when if I had the shipments I could probably put over sales for them.

[fol. 1154] Q. What kind of shipments are you talking of, perishable goods?

A. Dry goods.

Q. Oh, dry goods?

A. Yes, sir.

Q. How long have you been in business down there?

A. Four years.

Q. Four years?

A. Yes, sir.

Q. And during that four years time you have been able to get your merchandise by the Seaboard Air Line, haven't you?

A. Yes, I have been able to get my goods by the Seaboard Air Line.

Q. And you are not complaining to this Commission here that the service is so utterly rotten by the Seaboard Air Line that you desire other service, is that correct?

A. I am not complaining at all; I am only stating that I would like a quicker delivery service if it is possible.

Q. You would like it?

A. Yes, sir.

Q. Have you any particular preference as to this service being given by the Seaboard Air Line as above any other truck service?

A. A faster delivery service is all that I am interested in.

[fol. 1155] Q. If another truck line was to ask for this service would you desire their service just as much as you would the service of the Seaboard Air Line?

A. Well, if the other line served us and showed as much courtesy, I can't see that there would be any difference. I have always been treated very nice by the Seaboard Air Line agents.

Q. Is your business located on the Seaboard property?

A. I would say it is 75 yards from the depot.

Q. You are friendly with the station man there, are you not?

A. Yes, sir.

Q. And you know quite a few of the employees?

A. Yes, sir.

Q. And they trade at your store?

A. Just a few of them. The Seaboard Air Line Station agent does not, but some of the section force, one or two of them trade in my store, but I don't get near all of the trade.

Q. You say that your merchandise that your are particularly talking about now originates at Charleston, South Carolina—is that correct?

A. Some of it, yes, sir.

Q. I mean what we are talking of now, these dry goods?

A. Yes, sir.

[fol. 1156] Q. Do you know whether or not the Seaboard Air Line operates a truck line from Charleston, South Carolina to Jacksonville, Florida?

A. I do not.

Q. You don't know?

A. No, sir.

Q. Then if I were to tell you that they do not, would you believe it.

Mr. Abeles: Mr. Chairman, I don't see the materiality of these questions. I think we are getting pretty far afield.

Mr. Kitchen: I don't think so. If I don't connect it up you have the prerogative of moving to strike it.

Mr. Abeles: I object to the question.

Chairman Matthews: The objection will be sustained.

Q. Mr. Earp, if your merchandise is transported from Charleston, South Carolina to Jacksonville by rail, which is a greater distance than from Jacksonville to Tallahassee, what advantage is it to you to have the last leg of the journey transported by a truck operated by the Seaboard Air Line?

A. Well, it is my opinion that at least one day would be saved, I think I could receive the goods at least one day earlier.

Q. What schedules do you have at the present time on the railroad coming in from Jacksonville?

A. Coming in from Jacksonville I believe we have what [fol. 1157] you call overnight service.

Q. What you call an overnight service?

A. I think so. In other words, I think that the goods are shipped out probably in the afternoon, and the next morning the merchandise is unloaded at Greenville.

Q. Do you know what schedules—I am asking you, do you know the present schedule that the railroad runs into Greenville?

A. I don't know.

Q. You live right next to the depot, or your store is right next to the depot?

A. Yes, sir.

Q. What schedules, if any, are to be offered to you by the Seaboard Air Line operating motor vehicles over the highway?

A. I haven't had a schedule offered to me. I have heard it said that we would get earlier delivery, and probably a number of hours earlier delivery.

Q. Well, if you get overnight delivery by train, and you would get earlier delivery by truck, and it gets there about three or four o'clock in the morning, tell us whether that is any advantage to you?

A. Shipments coming out of Jacksonville, there really couldn't be any improvement on shipments coming out of Jacksonville.

[fol. 1158] Q. There couldn't be any improvement over the present service?

A. No, not on shipments coming out of Jacksonville. That really would not help me any, but shipments coming from South Carolina it would help me, and I also buy some goods from Montgomery, Alabama. I think it would help me quite a bit in receiving shipments earlier.

Q. Do you know whether or not the schedules that are offered by the motor vehicles of the Seaboard Air Line are so coordinated with the schedules of the rail line from Montgomery—by the way, does the Seaboard Air Line operate from Montgomery?

A. I suppose it does.

Q. You don't know positively?

A. Yes, sir, I do know positively that it does operate from Montgomery.

Q. Now, to get back to the original question, do you know whether or not the schedules are so coordinated that a shipment that you might order in South Carolina and brought to Jacksonville, that these schedules are so coordinated that it constitutes a through shipment? In other words, will there be any delay in Jacksonville, or any more delay in Jacksonville than there is now in making connections with the train?

Mr. Abeles: This witness just stated that he was not relying on any improvement in service moving to Jacksonville.

Mr. Kitchen: I am asking him if it originated in Charles-[fol. 1159] ton, and I am asking if there is any coordination of schedules that will improve the service from Charleston to Greenville.

Mr. Abeles: He said no, he has already answered that question.

Mr. Kitchen: That is what I wanted to know.

Q. It is of no advantage to you, is it?

A. On shipments originating at Jacksonville, no.

Q. Well, outside of Jacksonville—We will go back and ask you about shipments originating in Charleston. Show me where it will be of any advantage, what coordination of schedules is there there that might facilitate faster movement of freight, what coordination of schedules is there there?

A. Well, I should think that it would—a shipment originating——

Q. Not what you think, what you know. We want to know what you ask by these schedules, you are coming here and asking for this, and there must be a reason. You admit that it is of no advantage to your business, I want to see if it will be of advantage to the public. We want to help you that much.

A. If by putting in this trucking system shipments can be delivered to me a day or two earlier, it will be of advantage.

Q. If they come, how will they——

[fol. 1160] Mr. Abeles: Now, again, I have not interposed any objection, but this witness was put on the stand for the sole purpose of confining his testimony to the statement that an advance in service of twenty-four hours would be an advantage to him in his business. He is not qualified to determine whether or not service would be provided. That has been testified to by the preceding witness. I think the cross-examination has gone far beyond the scope of the direct examination and I object to any further inquiry along that line. If he knows, all right, but if he does not know—and he has just stated that he does not—I think the cross-examination should stop.

Mr. Kitchen: Evidently this is an application for a certificate of public necessity and convenience, and on cross-examination you well know, and I have seen you exercise the privilege that we have very wide latitude, and we are exercising that latitude.

Chairman Matthews: The witness has stated that he does not know what the schedules are, and you hardly need to pursue that subject further.

By Chairman Matthews:

Q. State whether or not you know what the schedules are.

A. I don't know what the schedules are, I don't know anything about the schedules. The only thing is, I understand it would give a quicker earlier delivery of goods, and if it does that will help me.

[fol. 1161] By Mr. Kitchen:

Q. Would you go out of business if you don't get it?

A. I hope not.

Q. You don't think you would?

A. I don't think I would.

Q. And you have been in business and operating under the present existing schedule?

A. I have.

Q. And you have found them satisfactory?

A. Well, there are lots of things that are satisfactory, but if a thing can be improved on I say improve on it.

Mr. Kitchen: That is all.

Mr. Walker: I have no questions.

Chairman Matthews: Let me caution you before we start on further cross examination, to try not to cover the same ground that has been gone over by one interest. Let us confine ourself- to new matter on further cross examination.

By Mr. Bliss:

Q. Mr. Earp, isn't there another railroad at Greenville, Florida?

A. There is.

Q. What is it?

A. The South Georgia Railroad.

Q. Do you use that railroad also?

A. No, sir.

Q. You do not use that railroad at all?

[fol. 1162] A. We do not. Well, occasionally a shipment will come in over the South Georgia Railroad, but it is very seldom.

Q. Do you use the L&L Freight Lines?

A. No sir, we do not.

Q. Do you know what their service is?

A. I don't, I have heard of it.

Q. You haven't made any inquiries as to their truck service?

A. I have not.

Q. So you would not be able to state whether or not it would fulfill your needs as well as the proposed service?

A. I know nothing whatsoever about the service of the L & L Freight Line.

Q. What is the name that you do business under, your store I mean?

A. C. D. Earp Grocery and Dry Goods Store.

Mr. Bliss: That is all.

Chairman Matthews: Are there any further questions of the witness?

(Witness excused.)

Mr. Abeles: I will call Mr. MacGowan.

K. A. MacGowan was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. MacGowan, please state your name, residence and occupation.

[fol. 1163] A. My name is K. A. MacGowan, Quincy, Florida, vice president of the Florida Company, manufacturers of Fuller's Earth.

Q. Will you state your interest in this proceeding, Mr. McGowan, or rather the interest of your firm?

A. Well, it is very simple. If our deliveries—Of course I am talking about less than carload freight now—our deliveries can be expedited it will be a decided advantage for us.

Q. Is promptness of delivery of some importance to you in the conduct of your business?

A. It is.

By Examiner Yardley:

Q. What commodities do you receive?

A. I have in mind particularly mill supplies, welding supplies, and bags, and things of that kind.

Q. Where are they shipped from?

A. We buy in Montgomery, Birmingham, Pensacola, and Jacksonville, and bags come out of New Orleans.

By Mr. Abeles:

Q. Have you found that there has been any delay in the receipt of these inbound shipments moving wholly by rail from the origin points you have mentioned?

A. I would explain a little bit before I answer that question if it is all right with the Examiner. Take for instance

shipments of burlap bags, our business is not as brisk as it once was, we work from hand to mouth. We have orders coming in for shipments export which have to be shipped in special printed bags, and very frequently we have to call [fol. 1164] on our friends of the Seaboard Air Line and the Louisville and Nashville to expedite shipments of bags. The shipments break at River Junction, and I believe with this proposed service we could save twelve to fourteen hours on that item alone, and that is a decided factor. We have only a few days in which to work to make a steamer at a certain time, and it would be a decided advantage to us.

Q. Would a delay of twenty-four hours, or an advance in the receipt of the shipment of twenty-four hours sometimes make a difference in catching a steamer and not catching it?

A. Yes sir, I would say that without hesitation.

By Examiner Yardley:

Q. Do you ship out in less than carloads?

A. The outgoing shipments are almost always in carloads. It is the incoming freight that we are interested in.

Q. You receive your incoming shipments in less than carload lots?

A. Yes sir.

Q. And you concentrate the shipments into carloads?

A. By the time—we might get a shipment of 500 or 800 bags, and when they are filled with our product they constitute a carload of Fuller's earth going out.

By Mr. Abeles:

Q. Is your machinery usually shipped in in less than carload lots also?

A. Repair parts, not machinery.

[fol. 1165] Q. But you do receive some machinery parts in less than carload lots?

A. Oh, yes.

Mr. Abeles: That is all.

Chairman Matthews: You may cross examine.

Cross-examination.

By Mr. Walker:

Q. Mr. MacGowan, didn't you testify before the Florida Railroad Commission in February, 1935, as a witness for

this same Seaboard Air Line that truck service was neither a convenience nor a necessity to your business?

A. Mr. Walker, you might embarrass me on that. I want to qualify before I answer yes or no, if that is allowed.

Chairman Matthews: Go ahead.

Q. I will ask you whether or not you testified under oath before the Florida Railroad Commission in February, 1935, that truck service was neither convenient nor necessary to your business?

Mr. Abeles: Mr. Chairman, I have no particular objection to his answering that question, except that it is designed, to develop an admission against interest. Is that what you have in mind?

Mr. Walker: Yes sir.

Mr. Abeles: Of course the proceedings in which that testimony was given or offered was an application I believe by an independent truck line to operate motor carrier serv-[fol. 1166] ice in this territory——

Mr. Walker: Just a minute. Let us not have you testifying, Mr. Abeles. I have asked him whether or not he did not come before the Florida Railroad Commission in February, 1935, and swear that truck service was neither convenient nor necessary to his business. He can say whether he did or not.

Mr. Abeles: All right, but I want to protest the admissibility of that testimony.

Examiner Yardley: Have you the title of that case, Mr. Walker?

Mr. Walker: That was a consolidated case of the Union Bus Company, H. T. Pace, and Acme Freight Line, Inc.

Mr. Abeles: May I ask, Mr. Walker, whether that was an application for intrastate certificate authorizing intrastate service between Jacksonville and Live Oak or any other point on the route involved in these cases?

Mr. Walker: I will answer that the Union Bus Company application and the Pace application were for both intra and interstate. The Acme application was intrastate only.

Mr. Abeles: And it was for authority to render a purely trucking service?

Mr. Walker: To operate a common carrier motor truck service between Jacksonville, Florida and Dothan, Alabama, in one instance passing through Quincy and in another instance passing through Thomasville.

[fol. 1167] Mr. Abeles: I just wanted to find out what it was about. That is all. I object to these questions, Mr. Chairman, because we are proposing here a type of service which is entirely different from the operation for which authority was sought in those proceedings. In other words, the cases were of an entirely different nature, and under the rules of evidence unless the issues before the tribunal are substantially the same, then any statement made in one proceeding is not admissible as an element of impeachment of testimony in the other. That is my position. I just don't want to confuse the issues.

Mr. Walker: There is no confusion of issues here. The question propounded by Mr. Abeles to the witness went to the adequacy of the existing service, whether truck service was helpful to his business or not, not the Seaboard Air Lines truck service. I am asking him if he didn't come here as a witness for this same Seaboard Air Line and swear on the witness stand that truck service of any kind was neither convenient nor necessary to his business. That is the question.

Chairman Matthews: The board will overrule the objection and let the witness answer the question in his own way.

A. Mr. Commissioner, I would not be able to answer that question correctly yes or no*t*. I do remember that hearing sometime back. I don't remember the date, and I don't remember the exact words of my testimony but I imagine [fol. 1168] my testimony was that at that time we were receiving adequate service from the railroads.

Q. Do you now consider that you are receiving adequate service from the railroads?

A. I think the service can be improved.

Q. Is it adequate for your needs?

A. No, I would say that at frequent times a speeding up of twelve hours would be of very great advantage to us.

Q. You ship out in carload lots only, don't you?

A. Yes—Well, I will qualify that—We have a few less than carload shipments, but they are a very small part of our business.

Q. It is mostly a carload business?

A. Yes sir.

Q. That would not be handled by truck anyway?

A. We have had to ship carloads at times by trucks in order to meet boats in Panama City.

Q. But the vast majority of your shipments are in carload lots outbound?

A. Yes sir.

Q. In answer to a question propounded to you by attorney for the Seaboard Air Line, Judge Oven, at this former hearing did you answer this question: "Have you found the rail and express service adequate and satisfactory?", and did you answer, "Yes sir, it is quite satisfactory to us"?

[fol. 1169] A. You would be able to say more accurately than I would in that case. I don't remember except that the general testimony I made was I was receiving adequate service.

Q. That was rail and express?

A. Yes.

Q. Now, the few less than carload shipments that you do ship out you ship by express, don't you?

A. No, very few.

Q. Do you ship less than carload by rail also?

A. By rail or truck.

Q. In the absence of truck service you would use express or rail, wouldn't you, in less than carload shipments?

A. Yes sir.

Mr. Abeles: Are you speaking of outbound shipments, now, Mr. Walker?

Mr. Walker: Yes sir.

Q. Now, your incoming shipments, are they mostly less than carload or carload shipments?

A. From a tonnage basis we have more carload tonnage than less than carload, but from the importance of continuing our plant in operation, one shipment of a piece of machinery that weighs ten pounds may hold the whole plant up.

Q. In answer to a question propounded by Judge Oven, attorney for the Seaboard Air Line, in that former proceeding, as follows: "State whether or not the granting of a [fol. 1170] certificate of convenience and necessity to one of these truck lines would be reasonably convenient and necessary in your business," did you or did you not answer this: "It is not necessary for us, and I don't think it would be a convenience. We are a mile north of town, and have no reason to feel that they would send trucks out there to make

deliveries to us if we ordered shipments made over the truck lines." Is that substantially your statement?

A. You are reading from the record. I imagine that is what I said. But, as I said before, I have no recollection of my exact words. My testimony was that at that time our service was adequate.

Q. Why the change of heart? You are in the same business as you were in 1935, are you not?

A. We had more business then than we have now. There is not so much pressure to get the shipments out to meet a boat.

Q. But you didn't need a truck line in 1935, did you?

A. I thought not at that time.

Q. I asked you why the change of heart?

A. Well, we had more business in 1935 than we have now——

Mr. Abeles: Mr. Chairman, I don't think that is a fair question.

Mr. Walker: Oh yes it is.

Mr. Abeles: I don't think so at all, and I object to it. To begin with, he has answered the question.

[fol. 1171] Mr. Walker: I will withdraw the question and put it another way.

Q. Why did you testify on behalf of the Seaboard Air Line that truck service was neither convenient nor necessary in your business when you testified in February, 1935, and why do you now feel that it is convenient and necessary in your business?

Mr. Abeles: He has already answered that question twice, Mr. Examiner.

Mr. Walker: If he will answer it that is all I want. I want him to explain it.

Mr. Abeles: He stated that expedition of delivery was more important to him at the present time than it was then.

The Witness: Mr. Commissioner, I don't see that I have much to answer there. It is more important now that we get our orders out promptly after we get them. We run now two or three days or four days a week, as we have orders. In 1935 we were running with more regularity.

Q. Then, when your business is regular, a truck line is not a convenience to you, it is only convenient when it is irregular.

A. When business is good, Mr. Walker—— Have you ever been in the manufacturing business?

Q. No.

A. When you have orders coming in you feel safer. We are almost in the position that we were in after the war, [fol. 1172] when cancellation rolled in, and we would wire back that we could not accept cancellations, that the customer would have to wait his turn. Now, if we get an order we ship it. It is more important now for us to get the orders out on schedule than it was in 1935 and prior to that time.

Q. Do you consider this irregular condition of your business to be a temporary condition, Mr. MacGowan?

A. I hope so.

Q. It is not a permanent condition?

A. I hope not.

Q. When your business gets back to normal, as you feel it will, there will be no necessity or convenience to have a truck line for your business, will there?

A. I will say this, that it would not be any harm to have competing lines, we would get better service on both of them.

Q. But there would be no necessity for it in your business?

A. There would be less reason for it then than there is under present conditions.

Mr. Walker: That is all.

By Mr. Bliss:

Q. Didn't I hear you state that if you had competing lines you would get better service out of both of them.

A. This present case is an application for an interstate certificate, so I don't know that my answer was very pertinent.

Q. Is it your understanding that there would be more [fol. 1173] competition in your area if this petition is granted?

A. We have the L and L Line coming in, from which we receive very little freight, and with whom we have had no very substantial contact.

Q. Is it your understanding that this will increase competition?

A. I imagine it will increase competition. We have one line coming in there now, and the railroad will come in with another.

Q. Proportionately how much has your tonnage dropped since 1935?

A. Without definite figures at hand I would say forty percent, maybe fifty percent.

Q. The tonnage now is sixty percent?

A. Fifty to sixty percent. Those are rough guesses. I would not want to have to substantiate that.

Q. Your tonnage now is fifty to sixty percent of what it was in 1935, is that what you wish to say?

A. I don't wish to say anything, but you are asking me about something. I think that is a fairly reasonable figure that I am giving you there. It has dropped from 1935 to about fifty or sixty percent of what it was.

Mr. Bliss: That is all.

By Mr. Kitchen:

Q. Mr. MacGowan, did you testify sometime ago, in the latter part of September or in the early part of October, [fol. 1174] 1936, at a hearing at the old postoffice building here in this town, in which the L&L Freight Line had an application for interstate—accenting the word "interstate" for the interstate carriage—did you testify at that time on behalf of the Seaboard Air Line?

A. I don't recall testifying except here at the Railroad Commission.

Q. Now, you testified to the necessity of moving less than carload freight by truck—did you say to Panama City?

A. Just let me correct that question or get you to correct it. You say I testified to the necessity of moving less than carload freight by truck. My testimony was as to the desirability of it.

Q. Then it is no necessity to you, it is desirable.

A. I think it would be an advantage.

Q. But not a necessity.

Mr. Abeles: Well now, that depends upon a definition of the word. I think we should confine this testimony to the facts, Mr. Chairman. Now, we are getting into an argument about definitions, and I think it should be stopped. I object to it.

Mr. Kitchen: Mr. Abele, I think that you entered into this.

Q. Now, did you state in your previous testimony here this morning that you had used truck service to trans-[fol. 1175] port less carload, truckload lots from Quincy to Panama City?

A. No, I did not.

Q. To what point did you testify that you used them?

A. I didn't testify to any point less than truckload on Fuller's earth.

Q. Did you testify as to carload lots?

A. I did.

Q. And to what city?

A. From Quincy to Panama City.

Q. Now, if this truck service is given to this applicant by the Interstate Commerce Commission will you get that service into Panama City by this applicant?

Mr. Abeles: Just a minute, Mr. Chairman. I think by the series of questions that he is asking that interveners have confused the issues in this case.

Mr. Kitchen: You have not coached your witness properly.

Mr. Abeles: The witness did not testify as to the use of this proposed service on outbound shipments at all, and I think that should be understood in the cross-examination.

Mr. Kitchen: If it please the chairman, we certainly have a wide enough latitude to find out whether this man knows what he is testifying to, or if he is testifying from memory what someone else has told him.

Mr. Abeles: Mr. Chairman, I resent that implication, and I want to state for the record that I have talked to [fol. 1176] this witness about thirty seconds before this hearing, and I never saw him before.

Mr. Kitchin: I am not speaking of what you have done, Mr. Abeles.

Mr. Abeles: Let us confine the cross-examination to the direct.

(Discussion off the record.)

Mr. Kitchin: I want to see if he knows what this applicant is asking for.

The Witness: Would you like me to explain my understanding of it.

Q. Yes sir.

A. It is my understanding that they are applying for a certificate for interstate truck service to parallel the railroad, and from station to station.

Q. The railroad from where, from what station to what station?

A. That would be indifferent to me so long as they had truck service that came into our town from River Junction and Tallahassee, and connecting with Montgomery and the Birmingham districts, and the points we draw our supplies and equipment from.

Q. Do you know whether or not this service as proposed will enable you to ship by its trucks from Quincy to Panama City?

[fol. 1177] A. I doubt very much that it would, because they have no line to parallel down there. I don't see that that affects us.

Q. Then it would be no advantage there, is that right?

A. Our advantage would be on connecting freight.

Q. Where do you get your bags from?

A. New Orleans.

Q. How do they come out of New Orleans?

A. By freight over the Louisville and Nashville Railroad and the Seaboard Air Line Railway.

Q. The Louisville and Nashville to River Junction?

A. Yes sir.

Q. And from River Junction to Quincy by the Seaboard Air Line, is that correct?

A. That is right.

Q. What is the distance from New Orleans to Quincy?

A. Approximately 400 miles.

Q. Approximately 400 miles from New Orleans to Quincy, you say?

A. Yes sir.

Q. What is the distance from River Junction to Quincy?

A. Twenty miles.

Q. Then these shipments being transported we will say 380 miles by rail, and as you have previously alleged inadequate service, then you expect that with 20 miles of the [fol. 1178] shipment by truck lines, will compensate for the rotten service——

Mr. Abeles: Mr. Chairman, I object to the form of the question, and ask that it be stricken from the record and counsel reproved for the form in which he put the question.

Mr. Kitchin: I withdraw the question and restate it.

Q. You stated I believe that it is 400 miles from New Orleans, and that it is 20 miles from River Junction to Quincy.

A. Yes sir.

Q. Do you expect truck service from River Junction to Quincy to compensate any loss of time that might have occurred by virtue of the fact that the shipment was made by rail?

A. Yes, as frequently happens, the Louisville and Nashville coming into River Junction fails to make connection with the local freight coming east, that shipment is delayed in River Junction 24 hours, and if the truck service that they hope to establish picks it up at a later hour than that freight train leaves, then it will be a decided advantage and save us 24 hours on the delivery of these bags in that twenty miles, due to no fault of the Seaboard, but due to delay in the freight reaching River Junction.

Q. All right, that is very nice, but I will ask you if the L&L Truck Lines, which operates between that point and Quincy, were to operate at an hour later than that at which the Louisville and Nashville train arrives, would you use the L&L freight service by truck?

[fol. 1179] A. If the L&L Freight service were party to that freight rate so it would be delivered without additional cost, that would be just fine.

Q. And that is what brings up something. Do you know whether or not this line which is going to be instituted, or which is proposed to be instituted, by virtue of this application, do you know whether or not you are going to be able to have not only coordinated service by truck and rail, but if through or joint rates and through routes by truck and rail?

A. I don't know, but I would be very much surprised if I did not.

Q. Are you not surprised that it does not exist today between the Louisville and Nashville Railroad and the L&L Freight Lines? Why should any preference be given to this truck line?

Mr. Abeles: Mr. Chairman, I think he is arguing. Do you mind my objecting? Is he sticking to facts in this cross-examination? I object to that last question.

Q. Then you don't know whether or not that condition is going to exist, do you?

A. Which condition are you talking about?

Q. In regard to the establishment of through joint routes and through joint rates between the so-called truck line operated by the proposed application and the various rail- [fol. 1180] roads to which it might connect. Do you know whether that condition would exist?

A. I don't know, but I anticipate that it will.

Mr. Abeles: I might suggest that counsel read the application and he will find out.

Mr. Kitchin: I might suggest that if you had complied with the law you would have sent us a notice of this hearing.

Mr. Abeles: That is up to the Interstate Commerce Commission and not to us.

Chairman Matthews: Let us not argue, gentlemen.

Q. Do you know whether or not the L&L Freight Lines or any other truck line can get truck service from the railroads?

A. I would not know that.

Mr. Kitchin: That is all.

Redirect examination.

By Mr. Abeles:

Q. Mr. MacGowan, when you testified in this proceeding to which your attention has been directed on cross-examination, can you state whether or not any better service was offered to you by the proposed truck lines then seeking authority than was already rendered by rail?

A. No.

Q. If no better service was offered than you were receiving obviously there would be no advantage to you?

A. There would have been no advantage in it.

Q. Do you recall whether or not there was any proposal [fol. 1181] in those cases, or in that case, to afford through transportation between points of origin from which you received shipments to destination at your plant, either all truck, or either part rail and part truck?

A. I don't know.

Q. So far as you know there was no direct service offered to you by the proposals in those cases from the points where you received shipments?

A. It certainly was not made evident by the truck lines to me at that time, I had no such information.

Q. With regard to the improvement of delivery of less than carload shipments, is it a fair statement that the service which exists under certain conditions may be adequate at one time, and under other conditions inadequate at another time?

Mr. Walker: Mr. Abeles, don't lead the witness, putting words into his mouth.

Mr. Abeles: I withdraw the question. That is all.

Recross-examination.

By Mr. Kitchin:

Q. Do you get merchandise out of Atlanta, Georgia?

A. Very little.

Q. And the little you do get, how do you get it?

A. By rail.

Q. Do you know that the truck service is many hours [fol. 1182] quicker than rail into Quincy from Atlanta?

A. I am not surprised if it is out of Atlanta, because of the fact the connections coming down are not good.

Q. Then if speed is essential to your business, why don't you use the truck service from Atlanta?

A. If I were buying in Atlanta it would be worth while, but we buy very little in Atlanta.

Q. Is there any reason why you should not give that little to the truck lines? You want speed, that is the only reason for your coming before this Commission?

A. I don't remember in the past several years that we bought anything except locomotives.

Q. Am I to understand that you are here at this hearing solely actuated by the motive——

Mr. Abeles: Just a minute. I object to the question about the motive of the witness in appearing at this hearing.

Chairman Matthews: Objection sustained.

Mr. Kitchin: I think we have a right to inquire as to the interest the witness may have in this affair, whether he is biased or prejudiced. I think that is permissible.

Chairman Matthews: The objection has been sustained.

Mr. Kitchin: That is all.

Mr. Walker: Counsel for the protestants for the purpose of further impeaching the veracity of this witness desire now to identify for the record and submit for the informa-

[fol. 1183] tion of the board the testimony of the witness, MacGowan, contained on pages 2242 to 2246 inclusive of the official record of the Florida Railroad Commission contained on notice docket 490, 269 and 233.

Mr. Abeles: Is that being offered for physical incorporation in this record, or incorporation by reference?

Mr. Walker: If you prefer that I make a copy of that and let you have it, I will do so, but I would rather have the reporter copy it in. It is short.

Mr. Abeles: I do not understand that the Commission's rules permit the incorporation of a record before any body except the Interstate Commerce Commission.

Mr. Walker: You are right, we will have to do it by reference.

Mr. Abeles: The reason I am objecting is that I do not know what that record contains, and I will have to have an opportunity to examine it because this witness must leave now, and I must examine the record before re-direct examination on the basis of this testimony there. I have no idea what it contains, so I don't think it is a proper offer. He has examined him and can examine him on anything that that record contains.

Examiner Yardley: Would we save time to have that copied and certified and taken into the record?

Mr. Abeles: If it is a brief excerpt I would rather have it done that way.

[fol. 1184] (Discussion off the record.)

Chairman Matthews: We will now take a recess until 2:15 p. m.

(Whereupon at 12:45 p. m., a recess was taken until 2:15 p. m.

AFTERNOON SESSION

2:15 P. M.

Chairman Matthews: We are ready to proceed.

Mr. Roland: Mr. Chairman, at this time I submit the petition of the Union Bus Company asking leave to intervene.

Chairman Matthews: It may be filed.

Examiner Yardley: Did we agree as to this excerpt from this other testimony, whether it is agreeable to receive that or not?

Mr. Abeles: It is not agreeable, Mr. Examiner. I have excepted as to its admissibility. I understand that certified copies of it will be made, I understand that the objections are overruled, and that copies will be furnished, is that correct?

Chairman Matthews: Yes.

Mr. Walker: I couldn't copy it at the noon recess, because I left it with Mr. Abeles for him to examine at the time of adjournment. As soon as I get it back I will have it copied.

Examiner Yardley: File a certified copy within ten days.

[fol. 1185] Mr. Walker: All right sir.

Chairman Matthews: Call your next witness.

Mr. Abeles: Mr. Seeley, will you take the stand.

T. H. Seeley was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Seeley, please state your name, residence and occupation.

A. T. H. Seeley, residence Havana, Florida, for Havana Canning Company.

Q. What are the products of the Havana Canning Company, Mr. Seeley?

A. Canned vegetables, fruits, jellies and preserves.

Q. And your operations are all conducted at Havana, Florida, are they?

A. Yes sir.

Q. On the route of the truck service which is proposed in this proceeding?

A. Yes sir.

Q. Do you make less than carload shipments and receive carload shipments by rail at the present time?

A. Yes sir, very rarely do we handle a solid car shipment.

Q. Are these shipments made to and are they received from points outside of the State of Florida?

A. Yes, I would say 75 per cent of our sales are outside [fol. 1186] of the State of Florida.

Q. How about your inbound receipts?

A. Fully 75 percent of the inbound receipts are from out of the State.

Q. Taking your inbound shipments first, what is the nature of that traffic?

A. Well, it is supplies in the way of labels, glues and mill supplies, machinery and equipment.

Q. Where do they come from principally?

A. They principally come—Most of all canning machinery is manufactured in the north, at Philadelphia and Cleveland.

Q. How do they move to you now, by rail?

A. Yes.

Q. Over what route? On what foreign lines do they move, do they come to you through Jacksonville?

A. Yes sir.

Q. It was testified to this morning, Mr. Seeley, that through the inauguration of this truck service which we are proposing in this case there will be a saving of approximately twenty-four hours in the delivery of less than carload shipments to Havana. Will you state how that will affect your business?

A. Well, there have been instances when it would have affected us quite a bit. One time we had a small swivel joint to our steam hose, and we couldn't get it in New Orleans or Jacksonville, and we called up by long distance [fol. 1187] to both places, and wired for it, and we had to cease operations there until we could get it. Mr. Ellison, the hardware dealer, we asked them to get it as quickly as possible, and he said he instructed shipment as quick as possible, and we were held up one time three days for that little piece of machinery. It kept the whole plant from operating in that particular instance.

Q. Then, are prompt deliveries of importance to you in your business?

A. There have been instances when a difference of twelve hours would mean the difference between a sale and the loss of a sale.

Q. Speaking now of inbound shipments?

A. Inbound?

Q. Yes.

A. Well, the case I just related was quite a handicap, because when operations are ceased you are not manufacturing anything to fill your orders with. We have a certain amount of overhead that goes on regardless.

Q. Now, about your outbound shipments,—it was testified this morning that the proposed truck service would advance a movement of shipments moving through Jacksonville for example, approximately twenty-four hours. Will that be of benefit to you?

A. In that case it would give twenty-four hours quicker [fol. 1188] delivery, and it would be a benefit.

Q. Why is prompt delivery of your manufactured product of importance to you?

A. Well, we receive orders, sometimes maybe a broker will wire us this afternoon and ask us if we can deliver an order of 200 or 250 cases to Augusta, Georgia, or Charleston, South Carolina, by day after tomorrow morning, or a certain time, and probably it is some bid or other that they want to accept, and they want to know whether to accept it or not, whether we can make delivery on this bid. There have been instances where we investigated the service and found we could not make delivery, and we would have to notify them that we couldn't make delivery although we would be glad to accept the order. We would lose that sale. That has happened recently.

Q. So, you would welcome this improved service considerably I suppose?

A. Yes sir, we would be glad to have it.

Q. Did you mention, Mr. Seeley, what your inbound shipments consist of?

A. Yes sir.

Mr. Abeles: That is all.

Chairman Matthews: You may cross-examine.

Cross-examination.

By Mr. Walker:

Q. Mr. Seeley, how long ago was is that you had your [fol. 1189] trouble with some machinery that you were telling us about, and were delawed three days in getting it?

A. It was along about the first of June, I believe, it was about the beginning of the blackberry season.

Q. June of this year?

A. Yes sir.

Q. June, 1937?

A. Yes, sir.

Q. Wasn't there a truck line running through Havana at that time?

A. Yes sir, I think there was a truck line going through there.

Q. The L&L truck line wasn't it?

A. I think so.

Q. And you put in your order with the Seaboard Air Line Railroad, didn't you?

A. No sir, you can't order parts over the Seaboard Air Line.

Q. You put in your order to be shipped via the Seaboard Air Line?

A. No sir, we didn't specify any particular way, we just asked that it be shipped as quick as possible. We presume they shipped it as quick as they could.

Q. Did they ship it by the rail direct line or the Seaboard Air Line, do you recall?

[fol. 1190] A. I don't recall. As a matter of fact the shipment went to Mr. Ellison. He notified us and we went right up and got it. We had been after him for three or four days or a week, calling him up, and he was sending long distance messages and calls about it to hurry it up.

Q. If there was a truck line operating through that territory, serving the point where you ordered it from, either by itself, or by connecting lines, and yet it was ordered by rail, then you did not at that time feel any particular advantage in truck service, did you? Otherwise you would have ordered by truck, wouldn't you?

Mr. Abeles: Mr. Chairman, I think he ought to lay a predicate for these questions. There has been no evidence of any truck line service as yet.

Mr. Walker: There was testimony that there is a truck line operating there.

Mr. Abeles: Yes, but unless you show by the record that the shipment could have moved by truck quicker than by rail there is no predicate for your question.

Examiner Yardley: The witness stated that he did not specify the method of shipment. It was ordered through someone else to be shipped as quickly as possible.

Mr. Walker: The point is that this witness is here to testify to this matter of public convenience and necessity, and he was not sufficiently interested to ascertain whether [fol. 1191] a truck line was or was not a better service than the rail line.

By Examiner Yardley:

Q. How much did this swivel joint weigh?

A. Not over a couple of pounds, it is just a little elbow joint that lets the steam into the hose.

Examiner Yardley: I should think that the United States mail, or express, or bus line would be the best in that case.

Mr. Walker: I want to ask some questions along that line.

By Mr. Walker:

Q. Passing through Havana then there is a truck line, the railway express agency, and you have a post office there?

A. Yes sir.

Q. And there is a bus line that goes through there that carries light express?

A. Yes sir.

Q. But regardless of that, and your need for this particular gadget, you didn't take the pain to inquire which type of service would get it to you quicker, you just asked this man to get it?

A. No sir, I presumed that the people that we ordered it from would do like we do. When a customer tells us that he wants delivery at a certain time it is up to us to deliver [fol. 1192] it and not to him to investigate it. So, when we asked that it be delivered as quickly as possible we thought that it would be delivered by the quickest way it could come.

Q. Then, you don't know whether the truck line operated by the Seaboard Air Line would be of any advantage in regard to quickness as compared with the United States mail, the bus line or the express agency, do you?

A. No sir, and I do not understand that to be my business here. I understood that my purpose was to state that

anything that would give quicker service would be of benefit to me.

Q. You don't know whether this proposed line would give you quicker service or not, do you?

A. Nothing more than that it is the presumption that on the application they would give at least twenty-four hours quicker service.

Q. Have you any particular favorites in the trucking business? Would the L. & L. Truck Line interest you just as much as the Seaboard Air Line Truck Line?

A. We are not interested in the Seaboard Air Line, L. & L., or the Acme, or any of them.

Q. If the L. & L. Truck Line was capable of giving you this twenty-four hour quicker service you would just as soon use it as to use the Seaboard Air Line, would you not?

A. Absolutely.

[fol. 1193] Mr. Walker: That is all.

By Mr. Bliss:

Q. How long have you been with the Havana Canning Company?

A. Since February, 1915.

Q. Do you mind giving us the names of some of the other officials of the Havana Canning Company? I understand you are the auditor?

A. Yes sir.

Mr. Abeles: What is the purpose of that question, and what is its relevancy to this issue, may I ask?

Mr. Bliss: Without impeaching this witness' opinion it would be interesting to develop if any other officials of the Havana Canning Company who were with that company in 1935 have testified in 1935 that there was no public convenience or necessity.

Mr. Abeles: I don't think the witness is qualified to answer such a question.

Mr. Bliss: I am asking for the names of people with whom he is now working. My question was simply who are the other officials of the company.

Chairman Matthews: Go ahead and answer the question.

A. Who are the other officials?

Q. Yes.

A. Mrs. E. J. Stephens, is president, Mr. C. E. Parsons is secretary-treasurer. Really I don't know who the vice [fol. 1194] president is, to tell you the truth.

Q. Do you know if they have been in control of the Havana Canning Company since 1935.

A. The Havana Canning Company was incorporated on December 16th, 1935, I believe.

Q. Oh, it was a new concern beginning in 1935?

A. December 16, 1935, I think was the date of the incorporation of the Havana Canning Company.

Q. Were they the successors of any other company operating the plant?

A. No sir, they were not, but the same lady, Mrs. Stephens was president, and is president of the Gypsy Products Company at Charles, Florida.

Q. Where was this piece of machinery shipped from, this swivel joint that you were speaking of?

A. I don't know.

Q. You don't know where it came from?

A. No sir, I don't know where it came from, I know it didn't come from New Orleans or Jacksonville, because we tried everybody there and couldn't get it.

Q. And it took three days to get it?

A. It took longer than three days to get it, I think it took ten days or two weeks, but after we expected it to be there and we had made plans for beginning operations, it was something like three days.

[fol. 1195] Mr. Bliss: That is all.

By Mr. Kitchen:

Q. You say that Mr. C. E. Parsons was connected with your company?

A. Yes sir.

Q. In what official capacity?

A. Secretary and treasurer.

Q. Do you know whether or not Mr. C. E. Parsons testified before the Interstate Commerce hearing which was held September 28, 1936 through October 10, 1936, requesting truck service?

A. No sir, he didn't testify for the Havana Canning Company, because he himself has only been connected with that company since about the 15th day of January, 1937.

Q. Do you know whether or not he testified before the Florida Railroad Commission sometime this year for the intrastate operation of a truck line operating from Jacksonville through Havana, Florida?

Mr. Abeles: Just a moment, I object to that question, I do not see that an issue involving intrastate service has any materiality at all on the issues before the Commission in this proceeding.

Mr. Kitchen: If it pleases the Commission, I think that this board particularly will take judicial knowledge that the L. & L. Freight Lines has an application before the Interstate Commerce Commission for interstate rights as well as intrastate rights, and the said rights are to be deter-
[fol. 1196] mined in the future by the Commission, and at the present time this board has full cognizance that it has a full federal status and is operating under a full federal status in interstate commerce. The relevancy of the question is that the applicant concerns both interstate and intrastate, and they are certainly closely interlocked so that a question of this nature would be relevant at this time.

Chairman Matthews: I don't see exactly how you are going to prove anything. This witness says this man was not connected with that business at that time.

Mr. Kitchen: I asked him first about October and then I asked him after the first of this year. I will qualify him after the first of 1937.

Mr. Abeles: I still object.

Chairman Matthews: The testimony given by this witness will show what he testified to.

Mr. Kitchen: We still have a right I think to request this board to subpoena that witness if we find it is necessary to bring him in.

Chairman Matthews: The objection will be sustained.

Q. Compared in volume is your outbound freight greater or less than the inbound freight?

A. The outbound freight is by far greater.

Q. By far greater?

A. Yes sir.

[fol. 1197] Q. On your inbound freight—that is what you are particularly desirous of additional service on, is that correct?

A. No sir, not altogether. We are just as desirous for quicker service if possible on outbound freight as on incoming freight.

Q. On your outgoing freight,—to what principal points do you ship?

A. Well, we have brokers all over the southeast, and right at this time——

Q. Do you mean southeastern Florida?

A. No sir, the southeastern part of the United States, south of the Ohio River and east of the Mississippi River. In the Carolinas and Eastern Georgia we are not able to handle a lot of orders there, and we have had orders, and we would call the freight line and ask them if they could make deliveries for us by a certain time. Sometimes they could answer right off, and again they would say they would let us know in an hour or so and we would call back and they would probably be able, they would say, or they would not be able. If our own trucks happened to be off on a trip we would have to turn the order down, but if we figured our own trucks would be back we would load our truck and put a driver on it and send them out.

Q. Now, that is testimony of shipments into the Carolinas, is that correct?

[fol. 1198] A. The Carolinas and eastern Georgia. Those are the points that we find it hardest to get good service on.

Q. Eastern Georgia, that comprises Savannah?

A. Yes sir, and Augusta.

Q. Do you know that you could give a shipment to the L. & L. Freight Line, which is a truck line operating through Havana, that that truck line would make connection either in Atlanta or in Jacksonville with R. C. Motor Line and make delivery, first day delivery, give it to them this afternoon, and by tomorrow afternoon that freight would be delivered in most any point in North Carolina, South Carolina or Eastern Georgia?

Mr. Abele: Just a moment please. He is asking the witness does he know something. I don't mind him asking him whether he knows, but I do object to counsel testifying that such is a fact when there is no evidence of record to that effect.

Mr. Kitchin: I asked if he knew that fact. We are laying a predicate, and under that we will show the facts, when the protestant has opportunity to present any evidence be-

fore this Commission. Is counsel going to keep each and every one of these witnesses here and recall them to the stand for us to cross examine after we have put in our case?

Mr. Abeles: That is coming within the province of your own affirmative testimony, not to bring it out through cross-[fol. 1199] examination. If you want to ask him whether he knows what service those lines afford to those points that is all right, but I don't want you to state something as a fact as to which there is no evidence in the record.

Mr. Kitchin: I think it will be substantiated, if not, you can make a motion to strike.

Mr. Abeles: Well I object to the question.

Mr. Kitchin: He can answer whether he knows or does not know.

Mr. Abeles: We will let the board decide that and not you.

Mr. Kitchin: That is what I ask.

Examiner Yardley: You might ask him if he knows what the service is.

Mr. Kitchin: I asked him if that service is there. I asked him if he knew that he could give a shipment to the L. & L. Freight Lines at Havana, and that the L. & L. Line would make connection there, either in Atlanta or would make connection in Jacksonville with the R. C. Motor Line, and by truck the said order would be delivered sometime the second day in the afternoon in to any point in eastern Georgia, South Carolina or North Carolina, in the eastern section. I think he can testify whether he knows that or not.

Mr. Abeles: Yes he can testify whether he knows it, but what I object to is a lot of factual matter being put into [fol. 1200] the record through counsel rather than through the witnesses. I think my objection is well taken, Mr. Chairman.

Chairman Matthews: You can ask the question of the witness and not make statements. Go ahead and answer that question if you do know anything about it.

A. Well, I didn't know exactly what the service was there, but I do know there are times when we do know the L. & L. Freight Line or the Acme Truck Company can get a load to a certain place early tomorrow night sometime, but we know if they do get there at that time that place will be closed, and they probably do not have a convenient

place in which to take care of that stuff, and that truck has got to go on and then carry the stuff back or leave it in some sort of warehouse, or something they can put it in and notify the people to get it early the next morning. We could ship a little that way. That has been investigated several times. We have a proposition up now. We have a a broker in Newark, New Jersey, that wants to handle our line, and we are investigating to see whether or not we can get the proper type facilities to get the stuff there, and no doubt we will learn all about that. What we are after is the service regardless of who can give it, we are not interested in that, because we are working for the Havana Canning Company, and that is what we are looking out for, and until somebody offers me a better salary I am acting for them. That is our interest, and what we want is as [fol. 1201] quick a service as we can get. If we can get it to New York in six hours less, that means that much more sales and quicker money. Whoever gives it to us we will appreciate it and give them a good bit of haul. That is just our status in the matter. There is no concern for anybody but our own welfare.

Q. In other words, may I summarize your testimony——

Examiner Yardley: Don't summarize it. Ask another question.

Q. Then, are you adequately served now?

A. No sir, we are not. There has been a time or two that—as I say, I can't tell you the gentleman's name, but when Mr. Welch called him about making a delivery for us——

By Examiner Yardley:

Q. Who is Mr. Welch?

A. He is connected with the L&L Freight Line, and they have done some hauling for us, do a lot of hauling for us when they can do it, but there was one time I remember when his service was not available, and nobody else was available, and we had to send our truck. We don't use our truck when we can get another service, because we can't save any money by operating our own trucks. It is just a convenience to have it there to make a delivery like that one.

Q. Where was that point that you asked for service and the L&L Line couldn't give it?

A. I believe that that particular point was out from——

[fol. 1202] Q. Out from Chattanooga, Tennessee?

A. Yes sir, we sent our own truck on that trip.

Q. Do you know whether or not this proposed service as offered to you by the applicant will transport your merchandise from Havana to that point?

A. Well I would not be able to know unles that service were inaugurated and we tried it out.

Q. Do you know whether or not this proposed truck service as offered by the applicant will operate to that point?

A. Into Havana?

Q. Yes, to Havana, and to that point outside of Chattanooga?

A. I don't know about Chattanooga, but I suppose it will operate to Havana. It operates along the line of the Seaboard Air Line Railroad.

Q. The L&L line operates in to Havana; does it?

A. The L&L Freight Lines?

Q. Yes.

A. I believe so, yes sir.

Q. And it was not able to give you that service?

A. It was not in this particular instance.

Q. Why would the applicant be able to give you that service?

A. I don't believe I have said they would, but that one instance has not been all, there have been others, but that is the only one that I recall. If we can get the service we [fol. 1203] would not even own a truck of our own.

Q. The Seaboard Air Line, was it operating into Havana at that time?

A. Yes sir.

Q. At the time of that shipment?

A. Yes sir.

Q. Was the Seaboard Air Line Railway in a position to transport that merchandise for you?

A. No sir.

Q. Then if this operation as proposed here is to parallel the present operation of the Seaboard Air Line, what advantage if any would you have should this certificate be granted?

Mr. Abeles: Mr. Chairman, the witness has stated fully on his direct examination, specifically what advantage he is going to gain from this proposed service and without wanting to be obstructive to cross examination, it seems to me it is purely repetitious, and going over exactly the same thing that has been gone over before. I object to the question for the purpose of promoting the progress of this case.

Mr. Kitchin: Am I to understand that counsel objects to cross examination on anything that he has brought out on direct because it might be repetitious?

Mr. Abeles: Yes, I think so, when it becomes so repetitious as to delay the progress of the hearing.

Mr. Kitchen: I think this Commision will accept my [fol. 1204] view that it is not so repetitious as that. We have a right to cross examine on what has been brought out on direct.

Mr. Abeles: That is not cross examination. If you want the witness' testimony read over for the purpose of refreshing your recollection, I have no objection.

Mr. Kitchin: Mr. Chairman, we asked what advantage it would be to a specific point. We asked this, the question was this——

Chairman Matthews: He has already told you that the Seaboard Air Line did not give it to him and that the L&L Freight Line could not give him the service to that point. If the Seaboard Air Line couldn't give it to him the mere addition of a truck line to their service would not give it to him, would it?

Mr. Kitchin: That is what I wanted to find out from him.

Chairman Matthews: Give us a chance to draw some conclusions. Don't make the witness draw all of them. We want something to do.

Mr. Kitchin: Then take back your witness.

Redirect examination.

By Mr. Abeles:

Q. When you refer to this particular shipment of a part for your machine, that was a swivel joint, was it?

A. Yes sir.

[fol. 1205] Q. You don't mean, do you, that that was the only instance of a less than carload inbound shipment which

would have been advanced into your plant in the past several months, do you, through this proposed service?

A. No sir, I only used that small part as an illustration to show you how a small part of machinery can tie up the whole plant. We have bean cutters, which are big machines, about all a truck can carry. We have these bean scalpers and washing machines and sealing machines.

Q. I don't want you to go into too much detail, I simply wanted to inquire whether you had a substantial movement of inbound less than carload shipments into your plant?

A. Yes sir, we have.

Mr. Abeles: That is all.

Recross examination.

By Mr. Kitchen:

Q. What volume of freight inbound shipments would you estimate in a years period of time?

A. What amount of tonnage volume?

Q. Yes sir.

A. I wouldn't have any idea about that, because a lot of it is labels and a lot of it is machinery, and I don't know what it weighs. I know some of it is more than the men who can get hold of it can handle. It is compact and heavy. We will use say 250,000 labels, and they come in packages, I don't know about what they weigh but they are in heavy [fol. 1206] packages, all one man can handle, and sometimes we will get a couple of hundred of them at one time.

Q. For what duration of time would these labels last?

A. Well, we generally place our label orders the first part of the year, and try to figure our quantities in whatever amount we will need that year. Sometimes we will run over and sometimes we have to reorder.

Q. But that usually constitutes a year's business?

A. Yes sir, they are shipped out as we need them. We will place an order for a million labels, and we will have them shipped out as we want them. We don't have much storage room. It would take a building as big as this for the supply of labels to run a whole season. We have them shipped out during the season according to the pack.

Mr. Kitchen: That is all.

Chairman Matthews: Are there any further questions.

(Witness excused.)

B. T. THOMAS was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Thomas, please state your name, residence and occupation.

A. My name is B. T. Thomas, I live at Live Oak, Florida, and I work for the J. R. Watkins Company.

Q. What is the nature of their business?

[fol. 1207] A. I am a salesman for them, acting as a dealer. We have different lines of stock. There are over 200 different items of stock, and we sell all through the country.

Q. What is the general nature of the merchandise you handle?

A. Well, we handle extracts, medicines, stock and poultry preparations.

Q. And your headquarters are in Live Oak?

A. Yes sir.

Q. Do you have inbound less than carload shipments coming into your plant?

A. No sir.

Q. How do you get your materials? Inbound materials?

A. Well we get them in small lots anywhere from say 200 pounds to a thousand pounds.

Q. How do they move into your plant by rail or by truck or how?

A. By rail.

Q. Then, they do move into your plant by rail?

A. Yes sir.

Q. Where do they come from?

A. Memphis, Tennessee.

Q. How do they move to your plant, to Live Oak, from Memphis?

A. Well now, the rails they come on, I don't know, I get most of my freight, for the last two years I have got it all [fol. 1208] through the Seaboard Air Line.

Q. Where from?

A. Memphis. The rails it comes on I don't know.

Q. I didn't mean the intermediate rail points, does it come through Jacksonville or through Bainbridge?

A. Through Bainbridge.

Q. It was testified to this morning, Mr. Thomas, that on shipments consigned to points between Tallahassee and Live Oak the deliveries would be advanced approximately twenty-four hours by the inauguration of the truck service proposed in this proceeding. Will you state what benefit your company will enjoy from this improved less than carload service?

Mr. Kitchen: Now, counsel has strenously objected to hypothetical questions. Their entire case here appears to be based on a hypothetical theory that they are going to get some additional service, and if the witness should get that additional service would it be of some advantage to him. He has continually throughout objected to any such testimony, and I think a number of times this board has sustained them. I object to that testimony as being not direct, nor seeking information which the witness himself knows. I object to it on that ground.

Chairman Matthews: Well, it has been testified on the record that they are going to operate on certain schedules and those schedules show that there will be certain time [fol. 1209] saved. Now, the witness was asked, I believe, that if that service were put into effect would it be an advantage to him. I think that is admissible.

Mr. Kitchen: Mr. Chairman, twenty-four hours quicker service than what?

Chairman Matthews: Than he is receiving now over the Seaboard Air Line.

Mr. Abeles: They have the present service by rail.

Mr. Kitchen: You are confining it to the present service by rail.

Mr. Abeles: Of course.

Q. Do you remember the question, Mr. Thomas?

A. I believe I do. Well, if I could get that twenty-four hour service it would mean a whole lot to me, because like it is it takes me anywhere from six days to eight days to get my stock, and lots of times I am out and have a rush order, and I just have to sit down and wait. I have went up to the depot as many as three trips trying to get freight, and it would be delayed. Usually I would get it about the seventh day, sometimes the eighth day. If I could get it twenty-four hours quicker it would mean lots to me.

Q. Do you make any interstate shipments from your plant?

A. No sir, I don't ship anything out.
Q. You ship nothing out at all?
A. No sir, I just get freight in.
[fol. 1210] Q. Then, your opinion would be dependent entirely upon your inbound shipments?
A. Yes sir.

Mr. Abeles: That is all.

Cross-examination.

By Mr. Kitchen:

Q. If that service as proposed by the applicant was not twenty-fours quicker, it would be of no advantage to you, is that correct?
A. Well, if I couldn't get the goods any quicker it would not be any advantage to me, if I could get them by rail as quick as I could by truck it wouldn't make any difference. All I want is swifter service. When I get out of goods I need it.
Q. What service are you getting from Memphis now, what length of time does it take for a shipment to go from Memphis to Live Oak by rail?
A. Well, it takes anywhere from six to eight days, it averages around seven days.
Q. Do you consider that inadequate to your needs?
A. Would I?
Q. I say do you?
A. It is what?
Q. Is this service from Memphis to Live Oak, the service now rendered by the railroad, inadequate?
A. Yes sir.
[fol. 1211] Q. If the present existing truck lines facilities could afford you four days service, would that be adequate to your needs?
A. Four days service?
Q. Yes.
A. Yes sir.

Mr. Kitchen: That is all.

By Mr. Bliss:

Q. Who determines the routing of your shipments from Memphis to Live Oak? Do you do that or does the shipper in Memphis do that?

A. The shipper in Memphis. I have written letters, I have written to the agents over here trying to get a nearer route so that I could get stuff quicker. That is left up to them, the route of the shipment. I have been in the business about seven years, and for the first four years I just ordered anyway, but I found I could get it moved maybe a day sooner on the Seaboard Air Line route, and of course I got the agent to send a letter to the Company to send it by the Seaboard in order to get my shipments quickly. That is what I was after.

Q. Have you ever suggested to the shipper at Memphis that he forward the shipments by truck service, a combination of motor carriers from Memphis to Live Oak?

A. I have written him to ship the quickest way, I have never asked him to ship them by truck.

[fol. 1212] Q. You never investigated the all truck service from Memphis to Live Oak?

A. No sir.

Q. And you don't know whether the shipper would accede to a request to ship it by truck in case it were quicker than shipping by rail, do you?

A. No.

Mr. Bliss: That is all.

Redirect examination.

By Mr. Abeles:

Q. Did I understand you to say, Mr. Thomas, that you had asked your agent to route the shipment via the quickest possible route, is that correct?

A. Yes.

Q. And you have never received a shipment by truck?

A. No sir.

Mr. Bliss: I object to that, because the shippers are not here to be cross-examined as to their reasons for using the rail carriers.

Mr. Abeles: I am not asking the shippers anything. I am simply asking Mr. Thomas whether in response to his request for shipment by the quickest route he has ever received a shipment by truck, and he answered no.

Chairman Matthews: The objection will be overruled.

Mr. Abeles: That is all.

Mr. Kitchen: Mr. Chairman, will you instruct this witness [fol. 1213] that he is not excused, we perhaps will recall him after we put in some testimony.

Mr. Abeles: Just a moment, I have to consult the witness. Do you want to get away?

The Witness: Yes sir, I am in a hurry to get away.

Mr. Abeles: I object to that request because we put these witnesses on out of order for the purpose of allowing them to get away, and I am anxious to accommodate them, because they are here at some sacrifice.

Chairman Matthews: Mr. Kitchen, if you want to interrogate the witness, do it now. I don't think we care to hold this witness here on the probability that you may want to question him later.

Mr. Kitchen: Major Matthews, I appreciate that the gentleman is busy, and for that reason we are not going to insist upon his remaining. However, we are going to have evidence to show that shipments from Memphis to Live Oak are made in four days.

(Witness excused.)

Chairman Matthews: Call your next witness.

Mr. Abeles: I will call Mr. Saunders.

HARRY SAUNDERS was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Will you please state your name, residence and oc- [fol. 1214] cupation.

A. Harry Saunders, Port St. Joe, Florida, representing the Port St. Joe Paper Company.

Q. Is the Port St. Joe Paper Company a large concern?

A. It is now being constructed at a cost of something like seven and a half million dollars.

Q. What will be the nature of the business of that company?

A. Making Craft paper.

Q. From woodpulp?

A. Yes sir, from wood pulp.

Q. In the business of that company will you receive interstate shipments inbound to any substantial extent?

A. To a fairly large extent.

Q. Of what will those shipments consist?

A. They are likely to be quite varied in nature, machinery, tools, equipment of that nature, felt dryers, and numerous things of that nature, along that line.

Q. What are the origins, generally speaking of your shipments?

A. Mostly on the eastern seaboard in the large trade areas.

Q. Would those shipments move by rail?

A. I don't understand what you mean by the question.

Q. How would the shipments move to your plant, from the origins which you have stated? Would they move by rail?

[fol. 1215] A. Quite a few of them would move by water to Jacksonville and then by rail.

Q. Via the Seaboard Air Line and the Appalachicola Northern to Port St. Joe?

A. Yes, sir.

Q. Will you state what benefit that concern will enjoy from the truck service which we propose in this proceeding, or which the Seaboard Air Line Railroad proposes in these proceedings?

A. We would expect to receive the same benefit from it that we are now receiving from the intrastate truck service that the Seaboard is now operating. I may say that previous to the inauguration of this service it took from three to four days to get a shipment from Jacksonville of materials and supplies ordered from Jacksonville and shipped direct from Jacksonville. Since the inauguration of the truck service we can wire or telephone an order this afternoon and we will have the supplies on hand tomorrow afternoon. We figure that the inauguration of the service which you are applying for now will give us that same quick service after the supplies and materials reach Jacksonville.

Q. So, you have had actual experience with the improvement to be effected by the employment of a coordinated truck-rail service, is that correct?

A. We have.

[fol. 1216] Q. Have you had occasion to use truck service at all, all truck service, or water-truck service?

A. We haven't used truck service, as there is no truck line through Port St. Joe.

Q. No truck line at all?

A. No truck line at all. Port St. Joe is not close to a trade center, and everything we have to have must come from some outside point either by truck, boat, or some railroad, to Port St. Joe.

Q. Your plant is not now in operation I believe?

A. No sir.

Q. When it is in operation where will be the market for your products?

A. The market will be available anywhere in the United States, and possibly foreign ports.

Q. It will be national or international in character?

A. Yes sir.

Q. Will there be an advantage to you in expediting the outbound shipments from your plant when it is in operation?

A. There is a strong possibility that it will be, on small shipments.

Q. Most of your shipments will be in carloads I suppose?

A. Yes sir.

Q. But you expect to make some less than carload shipments?

A. Yes sir.

[fol. 1217] Mr. Abeles: That is all.

Cross-examination.

By Mr. Bliss:

Q. Mr. Saunders, your shipments in any event will arrive in Port St. Joe over the Appalachicola Northern?

A. Yes sir, that is at the present time and until such time as the harbor facilities are available, at this time it is possible that shipments, some shipments of carload proportion may come by boat.

Q. The residents of Port St. Joe are endeavoring to get better water facilities there, are they not?

A. Yes sir—You mean by that from the standpoint of habor, inland water or both?

Q. Well, one or both?

A. Well, we are trying to have both, with a different idea in mind. The inland will be from the standpoint of

bringing pulpwood in, while the harbor improvement will be more from the standpoint of shipping finished products out.

Q. Do you know the schedule of the Appalachicola Northern between River Junction and Port St. Joe?

A. Approximately.

Q. Can you state that for the record?

A. If my opinion is correct, the train leaves there between seven and eight in the morning and arrives in Port St. Joe about 12:45 p. m.

[fol. 1218] Q. That is the only southbound train?

A. That is the only scheduled southbound train, but they frequently run extra trains at the present time to take care of the business that the paper company has been developing.

Q. And what is your northbound service?

A. The scheduled train leaves at 6:15 p. m.

Q. Do you know if there are any through rates between the Appalachicola Northern and any motor carriers?

A. It is my understanding that there is not, it has been sometime since I have gone into the matter. I was told that there was no interchange between the railroad and any existing truck line. Whether that condition has changed recently or not I don't know.

Q. In speaking of coordinated motor and rail service, it would be a matter of indifference to you as to whether the coordination was with a subsidiary of the Seaboard or with an independent motor carrier. Would that be important to you, or would it be a matter of indifference?

A. It would certainly be important to us if they were not interchanging freight one with the other.

Q. You misunderstood my question. If there is a coordinated motor and rail service, does it make any difference to you whether the motor carrier part of that service is an independent carrier or a subsidiary of the railroad?

A. If I understand your question correctly, on a shipment [fol. 1219] from Jacksonville would it make any difference whether some truck line carries it to River Junction or whether the truck line of the railroad carries it to River Junction?

Q. As long as they had through rates, yes sir.

A. In view of the fact that those conditions do not exist I do not believe that I care to answer that question. It

depends on what truck lines and what service they might be able to give.

Q. You understand that this is a proposed service that is being asked for?

A. I do not consider it as such, it is an addition to present service.

Q. You mean your present intrastate service?

A. Yes sir.

Mr. Bliss: That is all.

By Mr. Kitchen:

Q. Mr. Saunders, how long have you resided in Port St. Joe?

A. How long?

Q. Yes sir.

A. I first went to Port St. Joe in May 1936, and have practically made it headquarters since that time. Business calls me away at frequent intervals, but that is my headquarters.

Q. Were you a member of the Florida state legislature?

A. I was.

[fol. 1220] Q. That was the legislature that passed house bill No. 138, was it not?

Mr. Abeles: I object to that question. I don't see any relevancy to the activities of the Florida Legislature in relation to this proceeding.

Mr. Kitchen: Well, I do.

Mr. Abeles: Well, I don't.

Chairman Matthews: What is the object of the question? I don't see just what bearing it would have on the case.

Mr. Kitchen: Major Matthews, on cross examination the witness may be cross examined for his liking for, or his liking against, and we can ascertain whether he is prejudiced for or against. Now, certainly this question as to whether or not he was a member of the legislature that passed House Bill No. 138, would certainly show that the witness is biased in favor of the railroad by voting for such a bill.

Mr. Abeles: I still object, Mr. Chairman.

Chairman Matthews: You may answer the question.

The Witness: Will you repeat the question.

Chairman Matthews: Read the question, Mr. Reporter.

(Question read.)

A. It was.

Q. Were you a member of the legislature from the district in which Port St. Joe is located?

A. I was not.

[fol. 1221] Q. Well at that time you were not representing the people in the district in which Port St. Joe is located?

A. No, not at that time, nor at any other time have I represented the people of Port St. Joe in the legislature.

Q. Have you been authorized by your company to come here and testify as to these matters?

A. I have been sent here by the operating manager of the mill, and by one of the directors of the company.

Q. Pardon me, I was not in the room—what is your official capacity?

A. Assistant to the operating manager.

Q. Do you have a traffic manager?

A. As yet we do not, that is, in a direct way; indirectly we have.

Q. Do you handle the traffic?

A. I do not.

Q. Then you are not familiar with the traffic situation, is that correct?

A. From a rate standpoint?

Q. From any standpoint we will say.

A. I am, as far as to receiving, and disabilities, and the length of time in receiving shipments, and things like that are concerned, yes sir.

Q. For what length of time has the Seaboard Air Line been operating trucks into Port St. Joe?

[fol. 1222] A. As far as I know they have never operated any trucks into Port St. Joe.

Q. They have not?

A. No sir.

Q. Then upon what are you basing your statement, or have you made a statement that truck transportation as stated in this application will be of benefit to you?

A. I have.

Q. On what do you base that statement?

A. Experience.

Q. What experience, if the Seaboard has not operated there?

A. The experience with the length of time it takes to get a shipment from Jacksonville before the Seaboard Air Line started operating trucks, as far as intrastate business is concerned, in connection with the Appalachicola Northern at River Junction, and the deliveries since that time.

Q. Have you received any shipments by way of the Seaboard Air Line truck service interstate?

A. Not to my knowledge.

Q. Then you have nothing concrete and your answer is based upon opinion and supposition; is that correct?

A. No sir, my answer is based on experience, and we do have something concrete.

Q. For instance?

A. For instance, take a General Electric Motor that [fol. 1223] comes down on the boat line and arrives in Jacksonville this afternoon, it is there available for shipment, and it comes by regular Seaboard Air Line movement. We find this afternoon we have to have a duplicate of that motor and are lucky enough to locate one in Jacksonville. The one that we locate in Jacksonville this afternoon will be in our plant tomorrow afternoon. They are available for shipment at the same time, but the one that comes by rail movement will be two or three days getting there.

Q. You are speaking of an example of the movement of a motor out of Jacksonville?

A. Or any other commodity, it would work on the same basis. I used that for an example.

Q. Any other commodity at the point of origin, Jacksonville, is that correct?

A. I used Jacksonville as one point of origin, and some other point as the other point of origin, but both being in Jacksonville at the same time.

Q. Have you ever received a motor shipped by boat to Jacksonville and delivered to you from Jacksonville on the trucks belonging to the Seaboard Air Line?

A. We have not.

Q. Then it resolves itself to a conclusion or opinion, does it not?

A. I can't agree with you that it does.

[fol. 1224] Q. Then you are basing your testimony purely on the movement of freight from Jacksonville to Port St. Joe?

A. I am basing it on our experience in moving freight from Jacksonville to Port St. Joe.

Mr. Kitchen: That is all.

Redirect examination.

By Mr. Abeles:

Q. Mr. Saunders, what county did you represent in the 1937 legislature?

A. St. Johns County.

Mr. Walker: I would like to know what is the basis for that question. It has nothing whatever to do with the case.

Mr. Abeles: I agree with you, but since our friend over here injected it, I am asking him.

Q. Mr. Saunders, getting back to something that we think is pertinent, let us clear up for the record an apparent confusion indicated by counsel's statement that your view as to the improvement in the service on an interstate shipment moving into Port St. Joe through Jacksonville is purely a matter of opinion, if that shipment moving through Jacksonville and through River Junction to Port St. Joe moves in the same vehicle between Jacksonville and River Junction, isn't it perfectly obvious that the interstate shipment would benefit to the same extent as the intrastate shipment is benefited?

[fol. 1225] Mr. Kitchen: May I inquire—Does this application call for transportation, or call for operation into Port St. Joe? I have not been able to see the application and study it?

Mr. Abeles: Operate by motor vehicle?

Mr. Kitchen: Into Port St. Joe. Is it asked for in this application?

Mr. Abeles: No.

Mr. Kitchen: Then I move that it be stricken from the record as immaterial and irrelevant all testimony heretofore given on that point, and any discussion of Port St. Joe, as being irrelevant and immaterial at this time, it is not contained within the application nor the rights sought by this applicant.

Chairman Matthews: Hasn't he shown on the record that there is connection at River Junction?

Mr. Abeles: Yes sir, fully.

Chairman Matthews: The motion will be overruled.

Q. Mr. Saunders, can you recall the question?

A. No sir.

Chairman Matthews: Mr. Reporter, will you please read the question?

(Question read by reporter.)

Mr. Kitchen: I object to the question as calling for a conclusion on the part of the witness, he not being qualified as an expert.

[fol. 1226] Mr. Abeles: He has stated his experience.

Chairman Matthews: I think he stated two or three times on the record what his experience has been, and I do not believe it is necessary to go over it again. The objection will be overruled. Let him answer the question.

A. There is no question about it in my opinion.

Mr. Abeles: That is all.

Chairman Matthews: Are there any further questions of this witness?

(Witness excused.)

George Gore was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. State your name, residence and occupation please, Mr. Gore.

A. George Gore, general freight and passenger agent of the Appalachicola Northern Railroad at Port St. Joe, Florida.

Q. Now, the Appalachicola Northern Railroad connects with the Seaboard Air Line at River Junction, does it not?

A. It does.

Q. Will you state the attitude of your company towards the application here before the Interstate Commerce Commission, Mr. Gore.

A. Well, the attitude of our company is that it is favorable to the extent that it improves and will improve the [fol. 1227] service on interstate shipments moving from beyond Jacksonville through Jacksonville.

Q. Have you had experience with the intrastate service which has been performed by the Seaboard Air Line by motor vehicle between Jacksonville and River Junction and interchanged with your line at River Junction?

A. Yes sir.

Q. Have you noted any improvement in that service?

A. We have.

Q. Has that benefited your line, or rather has it benefited the shippers on your line?

A. It has benefited the receivers on our line.

Q. I meant the receivers of freight.

Mr. Kitchen: I object, Mr. Commissioner, that calls for a conclusion on the part of the witness. How does he know it benefits the receivers?

Mr. Abeles: He can cross examine him on that part if he wants to.

Mr. Kitchen: But the receivers are not here to be cross examined, and he is surely stating a conclusion.

Mr. Abeles: Mr. Commissioner, I object to this interruption. The witness has made a statement of fact. If Mr. Kitchen wishes to question him as to the basis for his conclusion, let him do so on cross examination.

Mr. Kitchen: But we are not going to sit here and be [fol. 1228] dominated by counsel by any means. We are going to tell him just like anybody else that is purely a conclusion, and this commission and this board knows it is a conclusion, when he says the receivers have been benefited. That is a conclusion on his part, and it certainly is not admissible in any case.

Chairman Matthews: You might ask him as to the saving of time in the delivery of freight, and such matters as that.

Mr. Abeles: I was just about to ask him that question.

Mr. Kitchen: Then I move that it be stricken from the record, the answer.

Chairman Matthews: On that particular question I think we will grant the motion.

Q. How have the receivers on your line been benefited by the intrastate service which has been heretofore rendered by motor vehicle, Mr. Gore?

A. By getting their freight at destination quicker, and it allows them to a certain extent to carry a smaller stock on hand where they know they have a dependable service and can get it in a very short time.

Q. What stations are there on your line between River Junction and Port St. Joe?

A. There are a number of stations, Greensboro, Florida, Hosford, Telogia, Vilas, Sumatra, Appalachicola and Port St, Joe.

[fol. 1229] Q. Will the deliveries to all of those points be advanced twenty-four hours by the proposed truck service, as you understand it?

A. As I understand it, they will be.

Q. What is the distance between River Junction and Port St. Joe?

A. 96 miles.

Q. Are any of the stations on your line which you have named served by truck lines?

A. No common carrier truck lines.

Q. Is there any paved highway serving those points?

A. Yes, Greensboro, Florida, Appalachicola and Port St. Joe.

Q. But there are no common carrier truck lines serving any of these points?

A. No.

Mr. Abeles: That is all.

Chairman Matthews: You may cross examine.

Cross-examination.

By Mr. Walker:

Q. Mr. Gore, do you recall having appeared before the Florida Railroad Commission in February 1935, and testifying on oath that you considered the present rail service over these same routes satisfactory and adequate?

A. I don't recall testifying in 1935, but it is possible I did.

Q. Do you recall testifying in this rroom before the Florida Railroad Commission that the present rail service

[fol. 1230] in the territory which you have just testified about was adequate and satisfactory?

A. I have testified that the rail service given by the Appalachicola Northern was adequate, and that as far as I knew it was satisfactory.

Q. In reply to a question by Judge Oven, counsel for the Seaboard Air Line Railway as follows, "Do you find the connecting service with the lines that serve Jacksonville and Pensacola to River Junction adequate and satisfactory", and that your reply was, "Entirely so"?

A. Possibly I did.

Q. Why the change of front in your testimony here today?

A. I do not consider it a change of front.

Q. Please explain why, if the rail service was adequate and satisfactory from Jacksonville to River Junction in February, 1935, explain why it is inadequate today.

(Discussion was had off the record.)

Chairman Matthews: The witness may answer the question.

The Witness: Will you read the question please.

(Question read by reporter.)

A. That is rather a hard question to answer, because the rail service at the present time from Jacksonville to Port St. Joe is satisfactory on traffic originating in Jacksonville.

Q. Do you consider it adequate to meet the needs of the people in Port St. Joe?

[fol. 1231] A. The present rail service on traffic originating in Jacksonville consigned to Port St. Joe is, so far as I know, adequate and satisfactory.

Q. Now, on traffic moving interstate into Jacksonville from some northern point and then being transferred on through billing from Jacksonville to Port St. Joe by rail, is that adequate at the present time?

A. Well, as far as I know it is.

Mr. Walker: That is all.

By Mr. Bliss:

Q. Mr. Gore, what time does your train leave River Junction southbound, and what time does it arrive at Port St. Joe?

A. It leaves River Junction at 7:10 a. m., Eastern Time, and arrives at Port St. Joe at 12:50 P. M. Eastern Time.

Q. You don't wait for Seaboard Air Line Train number 83, which leaves Jacksonville at eight P. M. daily, according to the testimony, and is scheduled to arrive in River Junction at eight a. m. the following morning?

A. We do not.

Q. You can see, can't you, that you could speed the service up a day by simply waiting to make connection with that train?

A. If we would wait long enough, yes we would.

Q. How long would you have to wait in order to make connections?

[fol. 1232] A. Well, it depends altogether on the time the Seaboard Air Line train gets into River Junction.

Q. Suppose it arrives on schedule time, at eight a. m.

A. We would have to hold our train approximately two to three hours.

Q. Yet you could make connection with a truck which is scheduled to arrive at 6:15 a. m., only holding it one hour?

A. We don't hold our trains.

Q. Well, you have one hour, approximately, 55 minutes to be exact, between the arrival of the intrastate truck and the proposed interstate truck, and the departure of your train. Is that sufficient to interchange shipments with the truck line, your intrastate shipments?

A. We are making the interchange at the present time. That possibly answers your question.

Q. What I want you to explain is why you can not make this interchange by an adjustment in either one or the other train schedule without seeking a certificate of convenience and necessity in operating a new truck service?

A. We cannot delay the operation of our present schedule for the reason that it is a mixed train, and we have mail express and passengers on that train.

Q. Have you ever requested the Seaboard Air Line to speed up the arrival of train number eighty-three?

A. I have not.

[fol. 1233] Q. Do you interchange with the L&L Freight Lines at River Junction?

A. We do not.

Q. Have you approached or negotiated with them?

A. I have not.

Q. Would your company be willing to establish through rates with them?

A. From Jacksonville?

Q. Or say from Atlanta to Port St. Joe?

A. I don't think so.

Q. You are not the official of your company who makes that decision?

A. Yes.

Q. You do?

A. Yes.

Q. Can you tell us please why you cannot interchange with the existing truck line rather than promise to interchange with one which is simply being proposed?

A. Just what do you want me to answer?

Q. I don't know, I am asking for information.

Mr. Abeles: Well, let us ask these questions one at a time and see if we can get an answer.

Q. Do you propose to interchange on through rates with this new Seaboard Air Line service if it is granted?

A. We do.

[fol. 1234] Q. Do you now refuse to interchange with the existing interstate traffic service of the L&L Freight Lines, Inc.?

A. We do not interchange with them.

Q. If it would benefit the patrons on your line at Port St. Joe and the various destinations on your line, would you be willing to enter into negotiations to that end?

A. It would also be necessary for it to benefit the railroad company too. We would not, just because it benefited some particular patrons of our line.

Q. I would like you to explain to the Joint Board the distinction between the two situations, on the one hand the existing service which you will not interchange with, and on the other hand the proposed service which you will interchange with. Can you explain that distinction?

Mr. Abeles: Is there any through existing service between Jacksonville and River Junction, truck service?

Mr. Bliss: I understand there is. There is one from Atlanta.

A. We are dealing with Jacksonville to River Junction.

Mr. Bliss: Yes there is.

Mr. Kitchen: If we are dealing entirely with Jacksonville to River Junction, this hearing is a waste of time, because that is intrastate.

Mr. Bliss: I am waiting for an answer.

Mr. Abeles: If there is no through truck service between [fol. 1235] Jacksonville and River Junction the question is entirely unnecessary.

Mr. Bliss: I am told that there is.

Mr. Abeles: All right, have the witness answer the question.

The Witness: It is necessary to read the question.

(Question read.)

Mr. Abeles: You mean the existing truck service.

Mr. Bliss: I want him to explain his willingness in one case and his apparent unwillingness in the other case.

Mr. Abeles: I want to find out whether by interstate service you mean existing truck service?

Mr. Bliss: Yes, existing truck service. This is a motor carrier hearing.

A. I do not recall ever having been approached to establish interchange service with any existing truck line at River Junction.

Q. Have you ever seen fit to approach any motor carrier?

A. I have not.

Mr. Bliss: That is all.

By Mr. Kitchen:

Q. Do you know about the fact that you have refused to accept a prepaid shipment from the L&L Freight Lines from Marianna destined to Port St. Joe?

A. I do not.

Q. You don't know about it?

[fol. 1236] A. I do not.

Q. Do you know that your company refused such a shipment from the L&L Freight Line?

Mr. Abeles: Do you mean does he know whether the company has ever refused a shipment of that kind? Again I object to the form in which the statement is made, because it is virtually testimony from counsel, and a similar objection has been sustained before, Mr. Chairman.

Mr. Kitchen: Mr. Abeles, I am on cross examination, and I can lead the witness.

Mr. Abeles: You can lead the witness but you cannot testify, and you cannot lead the witness beyond certain limits (Wigmore on evidence). Ask questions rather than making statements.

Mr. Kitchen: Read the question please.

(Question read.)

Chairman Matthews: Reframe the question.

Q. Do you know whether or not your company has ever refused to interchange freight with the L&L Freight Lines on shipments originating at points outside of the State of Florida and destined to Port St. Joe?

A. We have refused to accept a shipment with the charges forwarded as COD charges; we have done that.

Q. Would you have accepted that shipment with the charges advanced?

[fol. 1237] Mr. Abeles: I think that question is improper, what he would have done under different circumstances. That is something that could not be foretold.

Mr. Kitchen: I think we have a right to know why he particularly favors this company, the Seaboard Air Line, above another truck line. I think that is particularly admissible.

Chairman Matthews: The objection is sustained.

Mr. Kitchen: I have no further questions.

Redirect examination.

By Mr. Abeles:

Q. Mr. Gore, you are not an operating man, are you?

A. No sir.

Q. If you held your train at River Junction for as much as three hours, what would be the result so far as your deliveries at Port St. Joe are concerned?

A. It would make a late afternoon delivery, if we were able to deliver at all.

Q. Would a late afternoon delivery do the receivers at Port St. Joe any good so far as that day's business was concerned?

Mr. Kitchen: I object to the question as calling for a conclusion, would it do the receivers at Port St. Joe any good—that is a conclusion.

Mr. Abeles: So far as that day's business is concerned. [fol. 1238] I think the witness as a traffic man can qualify to answer that question. He knows how those shipments are handled by the receivers, it is part of his duties.

Chairman Matthews: The objection is sustained.

Q. Do you know as a traffic man, Mr. Gore, as a railroad traffic man, the latest hour at which a shipment can be received at Port St. Joe for handling by the receivers at that time?

A. Well ordinarily a shipment if it came in after three or four o'clock in the afternoon, the receiver would not remove it until the next day.

Q. What time did you say your train now leaving River Junction at 7:10 a. m. arrives at Port St. Joe?

A. 12:50 p. m.

Q. Did I understand you correctly to say in your cross-examination that you considered the present rail service, disregarding truck service to be adequate, and if so, what did you mean by that statement?

A. Do you mean insofar as interstate traffic is concerned?

Q. Yes.

A. I mean that at the present time we are prepared with the service that we operate from River Junction to Port St. Joe, to handle all of the business that is offered, and that as far as our operation is concerned we have no complaints from any of our customers.

[fol. 1239] Q. Now, if you assume that you can advance interstate shipments moving through Jacksonville in connection with your line at River Junction twenty-four hours, would you say that the present service is adequate, if you refuse to give them that service?

Mr. Walker: I object to that Your Honor as arguing with his own witness. His own witness has brought out the fact that he considers the rail service entirely adequate and satisfactory. Now, this is argument, and an attempt to impeach his own witness.

Mr. Abeles: No, I am merely trying to get the witness to explain what he meant.

Mr. Kitchen: I think the witness also testified that he had had no complaint from anyone as to the service.

Mr. Abeles: That is not what I am asking. I am asking whether as a traffic man he would be giving his patrons service if he refused the opportunity to improve the traffic by twenty-four hours.

Mr. Walker: How can he then say it is adequate? He said it was adequate.

Mr. Abeles: He was testifying as to two years ago.

Mr. Walker: No, he testified that the present rail service was entirely adequate.

Mr. Abeles: I didn't understand him to do that. I understood he was testifying in regard to the 1935 proceedings.

[fol. 1240] Chairman Matthews: Let me ask the witness this question.

By Chairman Matthews:

Q. If this application of the Seaboard Air Line Railway is granted will you then make connection each morning at River Junction with their trucks?

A. It would be our intention to do so. I can say that in the past, since they have inaugurated the intrastate service, we have made each connection.

Mr. Abeles: I think that is all.

(Witness excused.)

T. W. Parsons, was recalled and testified further as follows:

Cross-examination.

By Mr. Walker:

Q. Mr. Parsons, I believe you testified that you are the assistant general manager for the southern division of the Seaboard Air Line Railway Company?

A. Southern District.

Q. What territory does that comprise?

A. That comprises the territory from Panama Park, just north of Jacksonville, to Florida, including the River Junction Line and the Line from Tallahassee to Bainbridge.

Q. In other words it covers Florida and part of the State of Georgia?

A. Yes sir.

Q. You testified this morning that you already hold a [fol. 1241] certificate of public convenience and necessity on intrastate carriage from the Florida Railway Commission. That was a certificate issued under the recent law which is known as House Bill No. 138, was it not?

A. I do not recall the House Bill number, but it is my understanding that it was authorized under legislation that passed during the last legislature.

Q. The law not requiring a public hearing or a showing of public convenience and necessity before the Commission for intrastate service, is that correct?

A. Yes sir.

Q. Then although you do possess a certificate of public convenience and necessity for intrastate carriage from this Commission, you have never shown or been granted a certificate from this Commission based upon a showing of public convenience and necessity; have you?

A. I don't think so. Do you mean this particular route?

Q. Yes, this particular route.

A. No.

Q. Now, as a matter of fact you have applied in the past to this Commission for such a certificate, have you not?

Mr. Abeles: Mr. Chairman, I have not objected heretofore, but I can't see that the intrastate situation has any relevancy whatsoever to the issue here before the Commission on an interstate application.

[fol. 1242] Mr. Walker: Why did you then in your direct examination, in your typewritten testimony go into the question of this intrastate operation?

Mr. Abeles: I can explain that very quickly.

Mr. Walker: Let me explain that a little.

Mr. Abeles: Let me answer your question. Because at the close of Mr. Parson's testimony he was asked whether there would be any additional cost of operation incident to performance of interstate operation over this route, and he said there would be none because the vehicles were already being operated in intrastate.

Mr. Walker: This was a question asked at the institution of this testimony, on page two of the testimony. Now, I can tell you the purpose of your question, Mr. Abeles, and the reason why it is asked that this be brought out on cross. It is simply this, that so far as the Interstate Commerce Commission knows by the very adroit question

about his holding a certificate already, Division 5 might conceivably have the idea that public convenience and necessity have heretofore been shown to the satisfaction of the Florida Railroad Commission. We want to show that every effort made by the Seaboard Air Line to obtain a certificate of public convenience and necessity from this Commission has been denied, and this Commission has consistently denied the application, and in so doing found that there was no showing of public convenience and necessity made.

[fol. 1243] Mr. Abeles: When you say this Commission, you mean the State Commission?

Mr. Walker: I am talking about the Florida Railroad Commission, I am not talking about the Joint Board. Now, to let him put in evidence the fact that he possesses a certificate of public convenience and necessity in intrastate commerce from the Florida Railroad Commission and not let us explain how he got it, is manifestly injurious to our case; so, this is simply to show that his position before this Florida Railroad Commission was never based upon any showing of public convenience and necessity, and that the only effort he made to show it, the Florida Railroad Commission turned him down, so this question is perfectly pertinent.

Mr. Abeles: May I reply to that briefly? So far as this proceeding is concerned the only thing the Interstate Commerce Commission is interested in is the public convenience and necessity of the proposed operation in interstate commerce. Now, any proceeding before the Florida Railroad Commission seeking an intrastate certificate obviously has to do only with intrastate service. Now, those two questions namely the public convenience and necessity for intrastate service on the one hand and for interstate service on the other are as wide apart as the two poles, and whether or not public necessity and convenience has been shown for [fol. 1244] intrastate service has no bearing, nor has the Interstate Commerce Commission in the slightest degree insisted on considering the question before the Commission in this proceeding, namely, the question of public convenience and necessity of an interstate service, and it seems to me we are confusing two wholly separable and separate things.

Mr. Walker: If it be confusing, he has begun the confusion. After he qualified the witness this morning, this question was propounded by Mr. Abeles: "Have we re-

ceived a certificate for such intrastate operation from the Florida Railroad Commission." If this is foreign to the issue, why did you ask him that?

Mr. Abeles: I just explained that.

Q. And the next question is "How long has that intrastate service been in operation." That is obviously to confuse Division 5 in Washington, to give them the impression that the Florida Railroad Commission has already decided that there is public convenience and necessity existing on intrastate traffic, so why not an interstate traffic?

Chairman Matthews: I think the witness testified that these certificates were held under an Act of the legislature, and not on a showing before the Commission.

Mr. Walker: That is what I am trying to bring out. We can certainly bring out the position of the Seaboard Air Line, the inconsistencies of their position. That has been [fol. 1245] allowed this morning in showing that certain witnesses testified here directly contrary to the way they testified in the former hearing, and that was permitted. Now, it seems to me perfectly permissible, and what we intend to establish by this witness is this, that when the truck lines asked for certificates interstate and intrastate over this route, and they come here with Mr. Parsons present and testifying, contending that there was no public necessity on this route for interstate or intrastate, and that the service here was adequate. They themselves applied for a certificate on interstate and intrastate and this Commission turned them down.

Then the L&L Line applied before the Interstate Commerce Commission, and they come in again and say, "No, this service is adequate," and now after that hearing, which was less than a year ago, they come in now and say, "Yes, it is necessary." Now certainly we can show that the applicant itself has taken four inconsistent positions chronologically.

Mr. Abeles: Of course that is a conclusion of counsel and we do not concede that the position we have taken in any case has been inconsistent. My only position is that testimony given in a case in which the only relevant issue was the public convenience and necessity of intrastate service, has no bearing upon the question before the Commission in this case, and I don't think any testimony given in any

such proceedings can be referred to here for any purpose [fol. 1246] whatsoever, whether it be for impeachment or any other purpose.

Mr. Walker: Is it your desire to confuse the record when you have shown and reiterated both this morning and this afternoon, and the Board has ruled on it twice, that two of these applications in which,—in the cases in which Mr. Parsons testified did contain an interstate allegation?

Mr. Abeles: I do not concede that they did. My position is that the interstate applications were not before the State Commission at that time. I should like to get this question ruled upon so it will not be delaying the proceeding continually, because it seems to me that our position is a sound one, and I would be very glad to have Mr. Parsons questioned on any testimony or statement which he made or may have made with reference to interstate service in the proceeding involving interstate service. I think that any reference to a proceeding in which intrastate service alone was involved is out of this picture entirely.

Examiner Yardley: Why did you bring that in, the intrastate service?

Mr. Walker: I brought that in for the sole purpose of explaining to the Commission that there would be no additional cost involved in rendering interstate service over the service which is already being rendered in intrastate commerce. It was not for the purpose of showing that we had established public convenience and necessity, but only [fol. 1247] for the purpose of explaining to the Commission what seems to us to be a material issue as to what additional costs the applicant here would incur through the establishment of interstate motor service, and that was my only purpose. Mr. Parsons testified in response to my question, "Will there be any additional cost incurred in operating the interstate truck service for interstate transportation," as follows: "No, there is no difference in the cost of operating a truck carrying intrastate traffic alone and both interstate and intrastate, and since we already operate for the transportation of intrastate traffic there will be no increase in cost for handling interstate traffic in these trucks." That was the only purpose I had in mind in referring to the intrastate operation.

Examiner Yardley: Was that statement based on the thought that the intrastate operations by truck are not now profitable?

Mr. Abeles: Not at all, it had no reference to the profitableness or unprofitableness of intrastate operations. It was simply for the purpose of showing that we are already incurring the cost of truck operation, and the interstate traffic would be handled in the same truck, and consequently no additional expense would be incurred if the authority we are seeking is granted.

Mr. Walker: Naturally he is not going to admit that the [fol. 1248] purpose of the evidence is what we assume it to be. Let us take it at its face value. Say that he had a very different purpose, it is the effect of testimony, not the purpose, or what one attorney might say his reasons were. It might be for the purpose of Mr. Parsons. Mr. Parsons has testified from typewritten testimony, I don't know who got it up. It might be Mr. Stanley's purpose, and not Mr. Abeles' purpose or Mr. Parsons' purpose, we have to consider the effect of testimony. We are on cross-examination, and he has been permitted to testify as to a certificate that he procured from this Railroad Commission on intrastate service, and I have certainly the right to bring out the circumstances under which that was procured.

Chairman Matthews: The witness has already stated in answer to your questions that it was secured under an act of the legislature and without any showing of public convenience and necessity, and it seems to me that is sufficient to set that matter right on the record, and that there is no occasion for going back into something that occurred before the Florida Railroad Commission. Further than that we did this morning permit you to question him about the testimony in that other case, and I understand that no objection is being made at this time to that line of questioning. I am going to sustain the objection.

Mr. Kitchen: Mr. Chairman, Mr. Walker's contention is [fol. 1249] purely for the purpose of impeaching the witness. Any testimony that will impeach the witness, any statement of any kind that he has made, if the proper predicate has been laid for the introduction of such testimony certainly is admissible in any court, no*t* matter whether it was made at a previous hearing or not. This witness here is being impeached upon things that he has testified to and things that he himself has said at previous hearings. If this witness were in a law case, and were to make a statement on that point contrary to the statements that

he made in the witness chair, certainly he could be impeached by the statements that he made before. Whether he made that statement before this Honorable Florida Railroad Commission I don't see that that puts any different phase on the matter. This witness has previously testified—I have the whole record here, a thousand pages——

Mr. Abeles: I grant you the right to argue your motion and my objection, but let us not have any statement of what is in that record go into this record until we get a ruling on the motion.

Mr. Kitchen: This is argument on the motion. Mr. Parsons has testified inconsistent with the testimony he has given today. Are we prohibited from impeaching him by his own words? Certainly that is not following the rules of evidence.

Chairman Matthews: Mr. Kitchen, the witness testified [fol. 1250] that he is operating under a certificate for intrastate service. He was not asked how he got that certificate until Mr. Walker asked him the question, and he said frankly they got it through an act of the legislature and without a showing of public convenience and necessity. Objection was made to Mr. Walker pursuing that course of questioning, asking whether the Florida Railroad Commission had not denied their application for intrastate certificate, and I cannot see that that has anything to do with this case, and therefore I have sustained the objection, and you may proceed. If you want an exception to it you may so note.

Mr. Kitchen: I want an exception.

By Mr. Walker:

Q. Mr. Parsons; did you not at one time testify before the Railroad Commission that your present rail service from Jacksonville to River Junction was adequate and that there was no convenience and necessity for a truck service there, either interstate or intrastate?

Mr. Abeles: Mr. Chairman, I make the same objection.

Chairman Matthews: We permitted that line of questioning this morning.

Mr. Abeles: I made my objections then to all of this line of testimony, and we excepted to the ruling.

Chairman Matthews: We merely sustained your objection in so far as the question went about the Florida Commission denying the application for a certificate.

[fol. 1251] Mr. Abeles: Very well, just to avoid repetition of objections, it is my understanding that the ruling is that Mr. Parsons can be questioned on any testimony which he gave before the Florida Commission in any proceeding involving this route?

Chairman Matthews: Yes.

Mr. Abeles: May I note an exception please.

Q. Will you answer the question?

A. Yes, sir.

Q. That was approximately February, 1935, was it not?

A. I don't recall being a witness in 1935.

Q. Do you—you do recall having testified to that effect don't you?

A. At sometime I think I did.

Q. As assistant general manager of the Seaboard Air Line do you or do you not know that in the year 1936 that line opposed the granting of a certificate of public convenience and necessity to the L. & L. Truck Lines, Inc., for interstate certificate on the ground that the present rail service of your line was adequate?

Mr. Abeles: Now, I ask you whether that application covered the identical route which is involved in these proceedings?

The Witness: No, it did not.

Mr. Abeles: Which application are you referring to, Mr. [fol. 1252] Walker?

Mr. Walker: I am talking about the Interstate Commerce Commission application heard here in 1936 before the Joint Board of the Interstate Commerce Commission.

Examiner Yardley: Whose application was that?

Mr. Walker: The application of the L. & L. Lines, Inc., covering this identical route. That was in October, 1936.

Examiner Yardley: That application covered the territory from Live Oak through Tallahassee to Marianna?

Mr. Walker: Yes, sir, and also interstate operation from Atlanta to Tallahassee, serving River Junction on the west and serving Live Oak, and connecting up with the Central Truck Lines on the east. The effect of it was to give a through service over the route sought to be served by this application.

(Discussion off the record.)

Mr. Abeles: Mr. Chairman, I think this is going far beyond your ruling in so far as the admissibility of questions based upon any record made or positions taken in that case. That route was from Atlanta to Tallahassee——

Mr. Walker: It covered the identical route you are now seeking.

Mr. Abeles: Was it an application for interstate service between Jacksonville and River Junction? That can be answered yes or no and I think upon that answer depends [fol. 1253] the ruling of the Joint Board.

Mr. Walker: We have two applications here, one from Jacksonville to Live Oak and the other from Live Oak to River Junction, which does cover the identical application, from Live Oak to River Junction.

Mr. Abeles: It does?

Mr. Walker: It does.

Mr. Abeles: But does not go to Jacksonville.

Mr. Walker: Only by connections.

Mr. Abeles: The certificate did not cover the operation from Live Oak to Jacksonville.

Mr. Walker: It did by connections, but not by direct route.

Mr. Abeles: The application did not ask for authority to operate between Jacksonville and Live Oak.

Mr. Walker: No.

Examiner Yardley: It covers it from Live Oak to River Junction.

Mr. Abeles: Are you opposing the operation from Jacksonville to Live Oak?

Mr. Walker: Yes, we are opposing both.

Mr. Abeles: Then this questioned to Live Oak to River Junction.

Mr. Walker: No, I asked him if he opposed the application of the L. & L. Truck Lines before the Interstate [fol. 1254] Commerce — on the ground that the existing rail service was adequate, in October 1936.

Mr. Abeles: Well, let us go along and see where these questions lead to.

A. I don't remember being a witness in that case.

Q. I asked you as assistant general manager of the railroad do you know whether or not your railroad company, the Seaboard Air Line, that you are assistant general manager for, did not oppose the application of the L. & L. Freight Lines, Inc.?

A. I don't recall it.

Q. You don't know whether your line ever opposed it or not?

A. I don't recall it.

Q. Is Tallahassee in your territory?

A. Yes, sir.

Q. Is Live Oak in your territory?

A. Yes, sir.

Q. Wouldn't it be your business to know it?

A. Not necessarily.

Q. In other words it would have been possible for the Seaboard Air Line to have opposed the application of the L. & L. Freight Line and you not know a thing about it?

A. Yes, sir.

Q. And if they did oppose it you don't know that?

A. I don't recall it.

[fol. 1255] By Examiner Yardley:

Q. Is it my understanding that this application covers less than truckload shipments only?

A. Less than carload.

Q. What is a less than carload shipment?

A. One package up to the capacity of a car, one shipment, two shipments, or a dozen, anything less than a solid car carrying a carload freight rate.

Q. It might take two trucks to handle a less than carload shipment?

A. Yes, even three.

Q. Does the applicant have a financial statement ready?

Mr. Abeles: Yes, but I have a witness to put that in and we will probably not get to him this afternoon.

Q. Are you the proper witness to talk about the Interstate Commerce Commission's safety regulations?

A. Well, I have indirect jurisdiction over that, but the man who has charge of that is the superintendent of motive power.

Q. Would you say that he is familiar with those regulations?

A. The superintendent of motive power?

Q. Yes.

A. Yes, sir, I would say he is.

Mr. Abeles: You are speaking about the trucks now?

Examiner Yardley: Yes.

The Witness: I should say he was but I have never had [fol. 1256] any question come up about it.

Examiner Yardley: We will assume that the applicant will supply that.

Mr. Abeles: I can assure you of that.

Chairman Matthews: We will not adjourn until 9:30 o'clock tomorrow morning.

(Whereupon at 4:55 p. m. the hearing was adjourned to October 20, 1937, at 9:30 a. m.)

[fol. 1257] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC 86687, Sub. No. 9

In the Matter of the Application of SEABOARD AIR LINE RAILWAY CO. (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a Corporation, of S. A. L. Railway Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of Florida, between Jacksonville and Live Oak, Florida.

Docket No. MC 86687, Sub. No. 10

In the Matter of the Application of SEABOARD AIR LINE RAILWAY CO. (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a Corporation, of S. A. L. Railway Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation Commodities Generally in Interstate Commerce, in the State of Florida between Live Oak and River Junction, Florida.

Tallahassee, Florida, October 20, 1937, At 9:30 o'clock a. m.

Before: Joint Board No. 205.

Present: Honorable Eugene S. Matthews, of the Florida Public Service Commission; Richard Yardley, Examiner, Interstate Commerce Commission.

Appearances: As heretofore noted.

[fol. 1258] Proceedings

Chairman Matthews: Come to order please. Gentlemen, we are ready to proceed.

T. W. Parsons resumed the stand and testified further as follows:

Cross-examination (continued):

By Mr. Bliss:

Q. Mr. Parsons, under your proposed service how would a shipment arriving at Jacksonville on Monday, say from the Clyde Mallory Line be handled when destined to be interchanged with the Appalachicola Northern Railroad?

A. By the Clyde Mallory Line?

Q. Yes.

A. That would be brought to our freight station at Jacksonville, and would leave Jacksonville at seven p. m., arriving at River Junction at 6:15 a. m., and go out by the Appalachicola Northern at 7:10 a. m.

Q. It would move from Jacksonville to River Junction by truck?

A. Yes, sir.

Q. You are proposing a partial movement by rail and partial movement by truck?

A. Partial movement by rail in connection with the Appalachicola Northern.

Q. I am referring to the service of your own line to reach [fol. 1259] the interchange.

A. No, that would be through truck service. It could be a rail and truck service.

Q. Would you move it through on the same truck?

A. Yes, sir.

Q. I thought you had one truck that turned back at Live Oak.

A. The schedule turns back, but the truck goes through.

Q. Now, in your applications 9 and 10, do they provide for a through service?

A. No, these are separate applications. The service is through, or can be made through, and will be made through.

Q. Practically speaking a truck will move all the way from Jacksonville to River Junction?

A. Yes.

Q. On the one application, number 9, it goes as far as Live Oak, and under number 10 it goes from Live Oak to River Junction?

A. Yes, sir. As far as that is concerned, the next day that truck could go to Tampa. It is not a question of territory, it is a question of schedules.

Q. But the piece of freight would stay on the same truck from Jacksonville to River Junction under this plan?

A. Yes, it would.

By Examiner Yardley:

Q. Of course if one application was granted and the other [fol. 1260] was not, say from Jacksonville to Live Oak, then it would be necessary to put that shipment on a train?

A. Yes, sir, it would go to Live Oak in a train and then by truck.

By Mr. Walker:

Q. Is it not a fact that if permission were granted to go from Live Oak to River Junction, but denied from Jacksonville to Live Oak, it would not be necessary to move that freight by train to Live Oak and then change over to a truck? Isn't it a fact that you could interchange with the Central Truck Line at Live Oak?

A. It is a fact that they could?

Q. Yes.

A. Yes, but we wouldn't do it.

Q. But you could do it?

A. That is assuming of course that the schedules matched up.

By Mr. Bliss:

Q. Why wouldn't you interchange with the Central Truck Lines at Live Oak?

A. Here is the reason: We get that freight from the Clyde Line at Jacksonville, haul it and pay drayage transfer at Jacksonville from the car to the warehouse, and then haul it down there, and give it to the Central Truck Lines? No, we wouldn't do that. We wouldn't give it to anybody.

Q. I am not interested in the terminal service at Jack- [fol. 1261] sonville, that could be arranged and taken care of in the division. I am asking you again why you would not interchange with a carrier already having rights.

A. Because I would not experience that loss—Neither you nor me could arrange the terminal matters that you speak of.

Q. It is your answer then because you don't wish to short haul yourself?

A. Why certainly. You don't do it. The St. Johns River Line don't do it, and nobody else does it, and we are not going to do it.

Q. You are asking me if we don't short haul ourselves in order to get better service?

A. I am telling you, you don't.

(Discussion off the record.)

Q. When you speak of the coordinated rail and motor service, what do you mean—coordinated at what point?

A. This is what I mean: For instance we have——

Mr. Abeles: Let me interrupt there. I have no objection to Mr. Parsons answering that question, but I am going to have another witness who will explain exactly what we mean by a coordinated service. I would prefer to have that witness cross-examined on that question, and I think I have the right to ask that that line of testimony be confined to the other witness, because Mr. Parsons merely testified to what we are proposing to do with the truck service in the way of truck operation. I do not think, [fol. 1262] in fact I am certain that he did not attempt to define, nor did he mention as I recall it, coordinated truck service. I believe we would make better progress and get a better record if the questions can be confined to the actual physical operations which we propose. Mr. Stanley, who is to go on the stand will explain matters relative to coordinated service.

Mr. Bliss: Will Mr. Stanley also be acquainted with the facts as well as the theory?

Mr. Abeles: You mean operating facts?

Mr. Bliss: Yes sir.

Mr. Abeles: Well, Mr. Parsons is entirely familiar with that, and testified in some detail as to operating facts, and any questions relating to operations I think will be properly put to him.

Mr. Bliss: We are trying to reconcile the theory and the facts.

Mr. Abeles: Suppose you go ahead with your questioning and see what develops.

Mr. Bliss: I will state it a little differently. I will withdraw that question as to what was meant, and ask the witness to give an example of coordinated rail and motor service under this proposed plan.

The Witness: As an illustration there is loaded daily except Sundays, one car of merchandise at New Orleans, [fol. 1263] and one car at Pensacola. That comes to River Junction this morning, and is picked up by train 82, leaving River Junction at ten a. m. Any freight for Havana can be unloaded out of the cars at Quincy and be picked up and delivered by truck within about two hours, whereas without the use of the trucks that shipment would come to Tallahassee and then go down to Havana on the Bainbridge local, thereby saving a day's delay to the shipper. Now, that train could come to Tallahassee and set the cars out at Tallahassee, work out the Tallahassee freight, and all the freight in those cars can be picked up and distributed north of Tallahassee the same day. They would be delivered this afternoon instead of tomorrow.

Another instance, there is a carload at Birmingham every day, Atlanta and Montgomery, that breaks bulk at Tallahassee. It comes to Havana and can be unloaded in the Havana depot and picked up this morning and delivered at Quincy and thence to River Junction the same morning, whereas if it comes to Tallahassee it is transferred and forwarded the next day by train, and that saves a day.

Now, by reason of the necessity of very high class fast freight train, and its connections, we cannot work a local between Live Oak and Jacksonville the same day. The result of that is that there is a day's delay. If we could handle that in trucks, all shipments between Tallahassee and Jacksonville would be delivered the same afternoon, [fol. 1264] arriving at Jacksonville at four a. m.

Q. You mentioned a movement from New Orleans to River Junction by rail. What railroad would that be?

A. The Louisville and Nashville.

Q. And then it is transferred to a Seaboard Air Line train or to a Seaboard truck under this proposal?

A. Seaboard train.

Q. It goes to Tallahassee by train?

A. No I didn't say that.

Q. I am talking about a shipment from New Orleans to Havana.

A. What did you ask me?

Q. I said it would be transferred to a Seaboard Train or to a Seaboard truck?

A. No.

Q. Which?

A. To a truck. If it came on a through train to River Junction, handled in connection with our train to Quincy, Florida, unloaded at Quincy and picked up by a truck out of River Junction and carried to Havana the same afternoon.

Q. Now, your train No. 83, I believe you testified, leaves Jacksonville at eight p. m. daily and is scheduled to arrive at River Junction at eight a. m. the following morning. Why couldn't that train be speeded up slightly in order to make the Appalachicola Northern connection?

[fol. 1265] A. The distance is too far from Jacksonville to River Junction and the time is too fast.

Q. That train moves as fast as it possibly can?

A. No.

Q. The train is slightly slower than the truck movement, is it?

A. Yes, it is slower than the truck movement.

Q. Is that true in general of trains?

A. Of trains?

Q. Yes.

A. No.

Q. Does that train have to perform any local work under this proposal.

A. No—you are speaking of train 83?

Q. Yes sir.

A. No.

Mr. Abeles: Do you mean under the present or proposed service?

Mr. Bliss: Either one.

Q. Tell me about it in either case, what sort of train that is, whether it is a through train, or if it is a local train, what local work is performed?

A. Well I will say it is both a through train and a local.

By Mr. Abeles:

Q. Mr. Parsons, if I might suggest clarifying the record, state what service the train now performs and what it will [fol. 1266] perform after the proposed truck service is established.

A. That train runs as a through train to Live Oak, and works local at all points between Live Oak and Tallahassee, and Tallahassee and River Junction.

By Mr. Bliss:

Q. That is at present?

A. At present. The proposed service is that we discontinue the local work.

Q. And allow that train to run through to River Junction?

A. Yes, that is the idea, to advance freight to Tallahassee and carload shipments to Quincy.

Q. And yet the time of that train will not be speeded up?

A. Oh, yes.

Q. What will its new schedule be?

A. I don't know.

Q. Then you do propose to speed up that train service if this application is granted?

A. Yes sir, that is one of the main things we want to do.

By Chairman Matthews:

Q. Mr. Parsons, does the train now make its scheduled time at River Junction?

A. Do you mean if it makes the present schedule arrival?

Q. Yes.

A. No sir, it does not as a general thing, but sometimes it does.

Q. Then is it true that you need to speed it up in order [fol. 1267] to make your present schedule?

A. Yes sir.

By Mr. Bliss:

Q. You mentioned in your testimony that you were already handling intrastate less than carload service by trucks over this route?

A. Yes.

Q. And that you could handle the interstate shipments at no additional costs. Are the trucks at the present time operated at less than loaded capacity?

A. In some cases they are, and in some cases they are at loaded capacity.

Q. In those cases where they are operated at capacity would you have to put additional trucks on the highway in order to take care of the interstate freight?

A. Yes, if we had over a truckload even intrastate we would put on another truck.

Q. So that you would then incur additional costs?

A. Under that condition, yes.

Q. How would you handle freight destined to Live Oak, Florida, from Montgomery, Alabama—how do you handle it at present and how do you propose to handle it?

A. It is according to what it is, whether it is less than carload or carload.

Q. Take less carload.

A. That goes out of Montgomery and comes to Talla-
[fol. 1268] hassee at night. It is unloaded at Tallahassee and loaded and consolidated with other merchandise at Tallahassee and goes to Live Oak on Train 82 leaving Tallahassee at 1:10 p. m.

Q. How do you propose to handle it?

A. We propose to handle that, I believe I said in my statement, let us see—That shipment, the way we would handle that, would be to set it out at Live Oak on 82, and pick it up by truck the same night, and work between Live Oak and Jacksonville. All the freight that would go through in this car would be worked out the same night between Live Oak and Jacksonville.

Q. At what point would the freight be set out?

A. At Live Oak.

Q. That is under the proposal?

A. Yes.

Q. Then a shipment from Montgomery to Live Oak would move all the way by train?

A. To Live Oak proper?

Q. Yes.

A. Yes, I thought you were talking about Live Oak and Jacksonville.

Q. I meant Live Oak proper.

A. We have both freight and truck service. If that was in a car that would break bulk at Tallahassee, and the train

was gone, then we would have an opportunity to take it by [fol. 1269] truck. In that case we would save twenty-four hours.

Q. Actually, Mr. Parsons, if this proposal is granted you will have a number of alternate methods of routing your freight, won't you?

A. Yes, that is where the coordination of train and truck service comes in.

Q. And your operating officials on the ground will be in position to handle freight one day by truck and another day by rail?

A. If we had a case where it would mean a twenty-four hour delay we would handle by train and if it meant a twenty-four hour delay by truck we would handle it by train, and vice versa. As a matter of fact, we are trying to speed it up. That has brought about this condition. A few years ago where a man would have twenty-five thousand dollars or thirty thousand dollars worth of goods in stock, today that same man is carrying five thousand dollars worth of goods. He is saving an investment of twenty-five thousand dollars due to quicker service, and that is what we are trying to give.

Q. You don't feel that you could figure out some other way to do this than to go to this Commission for a certificate of public convenience and necessity?

A. Figure some other way to do it?

Q. Yes.

[fol. 1270] A. Well, I suppose there might be some other way, but it would be cumbersome, expensive and impractical. I am not saying that our service is not good, we have got good service over here. We have tried to figure out the needs of people on this railroad, that is our whole thought, and we are putting forth every effort we can to improve our service all the time.

Q. Does the railway express agency operate over your line?

A. Yes sir.

Q. Have you ever made any proposals to the Central Truck Lines, Inc., or the L&L Freight Lines, Inc., for them to so arrange their schedules as to assist you in speeding up your service by rail?

A. No.

Q. Isn't it true that you have a general policy against interchanging with independent motor carriers?

A. I don't know of any interchanging we are doing with independent motor carriers, but we don't do it with all railroads, it is a matter of divisions and rates, a matter of our own interests, that is what we are in the transportation business for, to keep our heads out of water. We have given up the idea of making money, but we do want to keep our heads out of water, and we certainly are not going to sacrifice any business, and give business away if [fol. 1271] we can get it. We are working too hard to get it to give it away to somebody else.

Q. You are however affiliated with a large number of railroads?

A. Yes, quite a number of them.

Q. Do you have any jurisdiction over the question of exchanging astray freight with various carriers?

A. What do you mean by astray freight?

Q. Your policy with respect to the interchange of strays.

A. Do you mean to swap freight.

Mr. Bliss: Strike that, because it apparently does not come under Mr. Parson's department.

The Witness: It might not, but I am able to tell you.

Mr. Bliss: Let it go.

Mr. Abeles: I would like to know what astray freight means, it is a new term to me.

Mr. Bliss: I think we might as well strike the whole matter, because Mr. Parsons is evidently not the one to explain it. That is all I have to ask.

By Mr. Kitchens:

Q. Mr. Parsons, in your official capacity with the Seaboard Air Line Railway, and your years of experience within the territory sought under the applications, you are fully acquainted with the Seaboard Air Line's facilities and all their transportation facilities within this area, are you not?

[fol. 1272] A. No.

Q. You are not?

A. No.

Q. Do you know that the L&L Freight Lines, a truck line which operates motor trucks upon the highways, operates in interstate commerce between——

Mr. Abeles: Just a moment. I renew my objection to the form of the question which counsel is putting. They are statements instead of questions. If you want to ask the witness if he knows what motor truck service that company is operating in this territory then, of course that is your right, but you have no right, in my judgment, and I submit to the Chairman that you have no right to make statements as you have persistently done for the purpose of getting factual evidence into the record through your own mouth rather than through the mouth of the witness. I realize of course that the Commission usually pays no attention to statements of counsel, but I think I have the right to keep it out of the record entirely.

Q. Do you know whether or not the L&L Freight Lines, a corporation is operating motor vehicles in interstate commerce over United States Highway No. 90 between Live Oak, Florida, Tallahassee, and as far as Marianna in interstate commerce?

Mr. Abeles: Just a moment. Mr. Chairman, I concede him the right to ask this witness whether he knows over [fol. 1273] what routes the L&L Freight Lines operate, but I do not concede him the right to define any particular route with the plain implication which he wishes the record to contain, that the L&L Freight Line does operate over this route, when there is not a scintilla of evidence to that effect in the record up to this time.

Mr. Kitchen: Mr. Chairman, I can't understand counsel's view. I asked the simple question if he knew that the L&L Freight Line operates. If I had asked if it operated in this territory he would want to know what particular part of the territory. He specifically asked that question yesterday, did the L&L operate from Jacksonville to Live Oak. Now, I confine that question and ask whether or not the witness knows that the L&L operates over United States Highway 90, the highway designated in this application of the applicant, and whether it operated between Live Oak, Florida, Tallahassee, Florida and Marianna. Those are the identical same towns to which the applicant is operating. Certainly the witness can testify whether he knows they operate, or whether he does not know. There is not a statement in there that is leading, and no statement in there that is improper. I think any court would permit that.

Chairman Matthews: The application does not ask for authority to operate to Marianna.

Mr. Kitchen: To Marianna, no, but I asked did he op-
[fol. 1273] erate through Marianna. The operation goes through River Junction, the last point under this application, so I can see nothing particularly wrong with the question.

Chairman Matthews: Let the witness answer the question if he knows.

A. No.

Mr. Walker: Just at this point, the chairman suggested yesterday that we might save some time, instead of having actual testimony as to the routes of these other protestants, that we might stipulate within ten days, and supply certified copies of our routes. That to my mind would save a lot of time, and cover the very point that Mr. Kitchen asked in that question. I understand the Seaboard Air Line has that under discussion at the present time. We can avoid all these questions and save a lot of time by stipulating that we are to file a certified copy of our routes and schedules within ten days.

Mr. Abeles: As filed with the Railroad Commission?

Mr. Walker: Yes.

Mr. Abeles: In other words, there will be no routes and schedules filed other than those which have been authorized by the Florida Railroad Commission—Is that my understanding.

Examiner Yardley: Do we need all this in the record?

Mr. Abeles: No.

[fol. 1275] (Discussion had off the record.)

Mr. Abeles: Let us go on with this cross-examination and we may be able to cut it short later on.

Chairman Matthews: Go ahead with the cross-examination.

By Mr. Kitchen:

Q. Do you know whether or not the L&L Freight Line operates motor vehicles over portions of the territory sought by the Seaboard Air Line here in this application today?

A. I can't say that I do.

Q. You can't say that you do?

A. No.

Q. And you claim that you have made a very thorough investigation into the transportation facilities within the territory; is that correct?

A. Of my own.

Q. Then I ask you, do you come before this board and limit your testimony purely to an investigation of the transportation facilities of the Seaboard Air Line solely?

A. What do you mean by facilities? Are you talking about depots or train service?

Q. Any transportation that is offered within the territory to the public. You have just stated that you made an investigation, and that you investigated your own. Now, I limit the question to this: Do you come before this board to testify that you know nothing of any other transporta-
[fol. 1276] tion facility offered to the public in that territory save and except the services offered by the Seaboard Air Line?

A. If I know nothing of any other transportation?

Q. Facilities and services offered by any company.

A. I don't know about any other transportation operation. My effort has been to improve my own condition and I see the way to do it, and give our people better service.

Q. Is this application filed by the Seaboard Air Line Railway Company, or the proposal as stated within the application, is it for the benefit of service to a community or a territory where at the present time there is no existing adequate service?

A. Right there, don't get me as saying we are not giving good service. We are giving as good service as any transportation line that I know of, and this territory is getting it, but we have an opportunity to improve that service and that is what we are seeking.

Q. You are not alleging to this board that there is not now existing within this territory adequate service for the needs of the public.

Mr. Abeles: Mr. Chairman, I think that is a conclusion to be drawn by the Commission rather than by the witness, and I would like to have the cross-examination confined, if the Commission please, to questions of fact rather than

conclusions. It seems to me we are wasting an enormous [fol. 1277] amount of time.

Mr. Kitchen: This man was put on the stand and qualified as an operating expert, he is the assistant general manager and traffic manager, and he is well familiar with the conditions, and he was put on the stand here for the purpose of telling this board all he knew, and what was needed within this territory, and supposedly his statement which was written there, and was alleged to be the statement of Mr. Parsons by counsel, showed the purpose of this application. Now, the purpose of this application is to improve service. We are here on an application to prove public necessity and convenience. I want to find out whether or not this expert here knows the conditions in the territory, and I want to find out whether or not this expert here is offering service to the public because there is not adequate service now there, and I want to find out if there is not adequate service there to tell us that fact. I think that is perfectly permissible.

Mr. Abeles: Mr. Chairman, my understanding is that the question whether there is a public convenience and necessity for this service or not is a legal conclusion which the Commission should decide and not a witness.

Chairman Matthews: Mr. Kitchen, don't ask for too many conclusions. Bring out the facts as well as you can, but the Commission should have an opportunity to draw its [fol. 1278] own conclusions from the facts.

Mr. Kitchen: Mr. Reporter, will you please read the question.

(Question read by reporter.)

Mr. Abeles: Whether there is adequate service is a conclusion to be drawn from the facts.

Mr. Kitchen: I withdraw the last question.

By Mr. Kitchen:

Q. Mr. Parsons, do you know whether or not this application as now filed before the Interstate Commerce Commission, either of the two applications, was based upon the fact that the present existing transportation facilities do not afford adequate service to the territory in which the applicant seeks to operate?

Mr. Abeles: Of course that is the same question in another form, Mr. Chairman.

Mr. Kitchen: I will ask the board to rule on that, and I will ask the stenographer to read it back to the board and ask the board to rule on it.

Chairman Matthews: Read it back.

(Reporter reads the question.)

Chairman Matthews: He may answer the question if he knows.

A. There is a difference between adequate service and needed service. From the standpoint of adequacy you can take every truck line off the highways and use our freight [fol. 1279] service, and it would handle the business. Now, the needed service, of course, is by reason of speed that people are seeking, howling for. In our study of the whole Seaboard Air Line system, not only of this line, but our whole thought and it has been gone over very thoroughly by Mr. Stanley and his organization, our whole thought is to improve our service to keep up with the times, to keep up with the demands of people receiving freight, and that is how we arrive at the fact that we can improve service here, and we are trying to do it, as we are trying to do it everywhere.

Q. Did the Seaboard Air Line in the transportation of passengers improve their service by placing these little motor cars on the lines of the Seaboard Air Line between Jacksonville and Tallahassee?

A. Yes.

Q. I ask you now if the increase in schedules and the faster operating time of that vehicle is what you base your answer upon?

A. Well, it had a great deal to do with it. The time of the day was the most important influence.

Q. Was there an additional schedule to the former schedule offered to the public from Jacksonville to Tallahassee?

A. Yes. If I may continue my answer—Adequate service—One train a day would handle every passenger we have, but it is a matter of what the people wanted. That is why [fol. 1280] the rail bus was put on.

Q. And that took care of that need at least temporarily, did it?

A. Not temporarily, it is still taking care of it.

Q. Mr. Parsons, why wouldn't it be just as reasonable to assume that additional schedules of the train, or a change in the present schedule of the train, would meet the need of the public if such schedules were quicker.

A. Our train schedules cannot be changed. They can only be quickened by the use of our trucks to handle the interstate business, because that would take the peddling of merchandise off of some of the through trains.

Q. From Jacksonville to River Junction—Your line, does it extend beyond that, the Seaboard Air Line?

A. No.

Q. If your freight schedule were made faster would there be any reason why it could not be held at River Junction awaiting a schedule with the Louisville and Nashville Railroad?

A. With the Louisville and Nashville?

Q. Yes, if you connected with the Louisville and Nashville Railroad at River Junction.

A. Read that question please.

(Question read.)

A. I don't know what you mean—we make the Louisville [fol. 1281] and Nashville schedule.

Q. I mean is there any reason why you couldn't get there ahead of time, and not make direct connections with the Louisville and Nashville. Is there any reason why it couldn't be delayed there in that town.

A. I declare I don't understand what you are asking. Will you read that question.

Q. I will withdraw the question and ask you this, Mr. Parsons: In your statement there, your testimony, you have offered to the public an increase in how many hours of service?

A. Increase in how many hours?

Q. Yes, in service. In other words the witnesses who testified yesterday said that if twelve hours could be taken off of the time of delivery it would be a great saving and a great advantage to them. Am I correct in saying twelve hours or was it twenty-four hours?

A. That is according to the case. Some might be twelve hours and some might be twenty-four hours.

Q. I think the witnesses testified that way. Is there anything in this written statement that you made yesterday on direct examination as to the number of hours saved to

the receiver of freight by the inauguration of this service if it is granted?

A. Yes, there are some specific statements in there, and [fol. 1282] the statement I made a while ago just to illustrate, the movement of merchandise from New Orleans, Atlanta and those points. I can't tell you here how many hours the total amount was, I can't tell you that, but I just enumerated here this morning an instance where we would save time to the consumer of freight moving in cars from different territories.

Q. Your counsel yesterday indicated to the witness on the stand, asked this question in substance: If this service would give you 12 hours quicker service would it be of advantage to you in your business, and the answer by the witnesses was yes. On cross-examination I asked several witnesses what advantage this service was going to be and they said this advantage would be an increase or saving of twelve hours time. I asked them how did they know that and they said they heard the witness Parsons testify to that. Now, are you going to save twelve hours. Mr. Parsons?

Mr. Abeles: Mr. Chairman, I am most reluctant to interrupt cross-examination, but it seems to me that here we have been going round and round and round in a circle, covering testimony which is already in the record, and the substance of the question that the counsel is now asking the witness to do is to repeat in toto what he has already testified to. I would like to register my objection, for the purpose of saving time.

Chairman Matthews: The objection will be sustained to [fol. 1283] that form of question. Mr. Kitchen, if you want to ask him anything direct about the service, and how he will save time, you may do so, but I think that was explained several times. Let us not review all the testimony.

Q. Mr. Parsons, how are you going to save the twelve hours time?

Examiner Yardley: He stated that yesterday, I think that is plain enough.

Chairman Matthews: I think it has been covered.

Examiner Yardley: I have to read all this stuff, and it has been gone over time and time again.

(Discussion off the record.)

Q. Mr. Parsons, if I should give a package to the Seaboard Air Line in Charleston, South Carolina, today, consigned to Tallahassee, Florida, under your present schedule when would it be delivered in Tallahassee, and under your proposed schedule when would it be delivered?

A. You will note by my evidence that my jurisdiction extends just north of Jacksonville. I have the schedules, but I haven't got the schedules with me. I would say in my best estimation, if that freight was put in in Charleston this morning it would be in Jacksonville the following morning.

Q. And that would be Thursday?

A. It would be in Jacksonville the same night.

By Examiner Yardley:

Q. The time to Jacksonville would be the same, wouldn't [fol. 1284] it? The only time saved would be from Jacksonville to Tallahassee?

A. Yes, that would leave Jacksonville under the present schedule at eight o'clock and be scheduled to arrive at Tallahassee at five o'clock the following morning. Of course if that was an emergency shipment, something that was of an extremely emergency nature, we would put that in Tallahassee by four o'clock in the afternoon.

Q. Tell us how it would get there with the truck service?

A. The only difference in that would be that it would arrive at Tallahassee by truck at 4:40 a. m., and here we have one advantage of truck over the rail service. A local shipment from Charleston would move to Jacksonville, be placed in the house and transferred to a box car. If for any reason, by accumulation of freight and congestion, that freight would be left over in Jacksonville, we would have two more hours more time to get it on the trucks than we would in freight service. We can put the shipment in our Jacksonville warehouse at seven p. m. or a little later, which would move by freight. Our freight house closes for train service at five p. m., and we would have two hours more time with the truck service than by train.

Mr. Kitchen: That is all.

Chairman Matthews: Are there any further questions?

(Witness excused.)

[fol. 1285] Mr. Abeles: Mr. Chairman, there is no evidence of record as to the truck operations now in service in the

territory covered by this application. In order to save considerable time, counsel for the truck lines and myself have agreed, if agreeable to the Chairman, that within ten days after the close of this hearing a stipulation will be filed showing the physical truck operations in this territory, accompanied by a legend or a supplemental statement, whichever may be agreed upon by counsel, explaining the status of those operations under the Federal Motor Carrier Act, that is, whether applications have been filed for interstate certificates, and if so the status of those applications with the commission.

In this way we believe that the Commission will be fully informed as to the status of motor carrier operations in this territory, and a great deal of time will be saved at the present hearing. Is that agreeable?

Mr. Walker: That is entirely agreeable. I would like to state now, so there will not be any differences of opinion that we concede, and I think you agree, that in getting up that statement and preparing that legend that it is not only the trucks actually physically operating over this road that are concerned, but trucks which by connections serve this territory.

Mr. Abeles: That is understood, any facts regarding truck operations either directly along the route here involved, [fol. 1286] or serving this territory through connections may be included in this stipulation, subject of course to any argument as to the relevancy that counsel may desire to make.

Mr. Walker: That is entirely agreeable.

Mr. Kitchen: Mr. Abeles, may I inquire whether or not you have included schedules in there showing the towns in which the movement of freight can by virtue of such connections or otherwise be made?

Mr. Walker: It is further stipulated and understood between counsel for the applicant and protestants that actual schedules in effect on the date of this hearing may be included in the statement heretofore referred to by counsel for the applicant.

Chairman Matthews: That stipulation is satisfactory to the board.

Mr. Kitchen: It is satisfactory to me.

Chairman Matthews: If there is any further testimony you may call your next witness.

W. L. STANLEY was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Please state your name, residence and occupation.

A. W. L. Stanley, residence Atlanta, Georgia, vice president of the Seaboard Air Line Railway Company, and chief [fol. 1287] public relations officer for these receivers.

Q. Will you state your association and connection with the development of motor carrier service by the Seaboard Air Line Railway and its receivers.

A. In connection with other officers of the railroad I have made a study of the possibility of improving our service by the use of motor vehicles over a period of several years, a number of years.

Q. Have you been intimately familiar with the plan and purpose which the receivers have in mind in establishing this service?

A. Yes.

Q. Will you explain what that plan is.

A. The objective is through the use of motor vehicles and the coordination of rail and highway service to improve the service which we are rendering to the public in the transportation of freight.

Q. What kind of freight?

A. Less than carload freight. Also, as a result, improve the service by the use of motor vehicles in handling the less than carload freight, to improve the carload freight also.

Q. Do the applications here under consideration by the Commission conform to this general plan and purpose?

A. They do.

[fol. 1288] Q. Is it the objective of the receivers to enter into motor carrier transportation independent of its rail service in any respect?

A. Our policy in developing motor vehicle——

Mr. Kitchen: Mr. Chairman, I object to the question on the ground that it is irrelevant and immaterial and tends to prove nothing on the issues here under the applications.

Chairman Matthews: Will the reporter read the question.

(Question read.)

(Chairman Matthews: I think that question may be answered.

Mr. Kitchen: I withdraw the objection.

A. Our objective has been to improve the service to the public, to confine our operations solely to the territory which is served by our rail lines, and not to go off of that territory; to operate wherever we are permitted to do so, motor vehicles over the highways or public roads that are adjacent to our tracks, and which serve the same communities which our rail lines serve.

Mr. Kitchen: Just a minute please. If it please the Commission, at this time I wish to move that the applications, the two applications presented before this board be dismissed, first, on the ground that the said board here sitting has no jurisdiction over the matters and things sought by [fol. 1289] the applicant; second, that it affirmatively appears from this statement of Mr. Stanley, the witness for the applicant, that it is not the intention of the Seaboard Air Line to engage as a separate business in operating motor vehicles over the highways so as to place this applicant under the provisions of Part 2 of the Interstate Commerce Act, commonly known as the Motor Carrier Act of 1935.

Third, that the said matters and things as presented herein by the application and the statement of the witness, Mr. Stanley, for the applicant, affirmatively and clearly manifest that this is an extension of a railroad operation under Part 1 of the Interstate Commerce Act. Therefore counsel respectfully submit that the said application be dismissed without prejudice to the right of the said applicant to apply before the Interstate Commerce Commission under part one for an extension of such railroad service.

Mr. Walker: Counsel for the protestants wish to join Mr. Kitchen in that motion.

Mr. Abeles: Does the Chairman wish to hear from me on that?

Chairman Matthews: The motion will be taken under advisement.

Examiner Yardley: I would like to get the protestant's position on that at this time. Do I understand that an application of this kind should be filed under Part 1 of the Act? [fol. 1290] Is that your contention?

Mr. Kitchen: Yes sir.

Mr. Abeles: And that, I take it, is the gravamen of the motion. I think it is clear beyond any question, Mr. Chairman, and the Commission has so held, that any motor application is cognizable by the Commission under Part 2 of the Act, and the Commission had held long before the enactment of the Motor Carrier Act that it had no jurisdiction over the extension of rail lines through the medium of motor carrier service. That has been held time and time again by the Commission, and it does not warrant any further argument.

Chairman Matthews: You may proceed.

Q. Mr. Stanley, will the traffic which we propose to carry in these motor trucks be offered as rail traffic or as motor traffic? What is the situation in that respect?

A. It will be offered as rail traffic and moved under railroad bills of lading.

Q. Has the applicant had experience in the operation of similar types of service thus far throughout their system?

A. Yes sir; over a period of a number of years.

Q. Will you just state what that experience has been, Mr. Stanley.

Mr. Kitchen: May it please the Commission, I move to strike the question on the ground that it has no direct relation or bearing on this particular application. If it were [fol. 1291] limited to this application I think it would be permissible, but unless counsel cares to modify said question I object to it on the ground that it is immaterial and irrelevant and as being too remote.

Chairman Matthews: The motion will be denied.

Q. Proceed, Mr. Stanley.

A. We have had such experience extending over a number of years. The first motor vehicle service which the Seaboard Air Line established was some five or six years ago in North Carolina, between Hamlet and Monroe, North Carolina, for the handling of freight and express between those points, and such traffic as might come to us at either one of those points destined to stations between them.

Q. As you recite this service, Mr. Stanley, can you give us the approximate mileage?

A. I don't know that I can give you the mileage of each one of them. The one to which I have just referred covers

a distance of about 54 miles. I can give you the total, and I can approximate most of them.

Q. Proceed.

A. The next service that was established was between Monticello and Drifton, Florida, under order of the Florida Railroad Commission Number 590, dated April 29, 1933.

The actual service in all these cases was established only after the date of the authority.

[fol. 1292] The operation between Monticello and Drifton covers a distance of approximately four miles, and the rail operation between those points was a branch line.

Mr. Kitchen: I move the Commission to require of the witness first that he be qualified as to whether or not that experience of transporting freight in and between these points is a movement of interstate freight or intrastate freight.

Mr. Abeles: I will bring that out later, Mr. Kitchen.

Mr. Kitchen: Mr. Chairman, I insist that that be done at this particular time.

Mr. Abeles: I would like to conduct my direct examination in my own way.

Chairman Matthews: I can't see that it makes much difference one way or the other, Mr. Kitchen.

(Discussion had off the record.)

Chairman Matthews: I think the evidence of the witness so far has antedated the passage of the motor carrier act and therefore he could have operated both interstate and intrastate, as other truck operators operated. He may answer the question and let Mr. Abeles go on with his examination.

Q. All right, Mr. Stanley, proceed.

A. The next motor vehicle service was authorized by the Florida Railroad Commission by its order No. 716, dated November 26, 1934, between Tampa and Brooksville, and Waldo and Morriston, two separate operations.

[fol. 1293] That operation was begun about January 1, 1935, and those distances are each about 55 or 60 miles.

The next operation was the establishment of a truck service between Jacksonville and Wildwood, Florida, pursuant to order No. 777 of the Florida Railroad Commission dated August 6th, 1935. That distance is about 160 miles, but I am not positive about it.

The next one was between Fernandino and Yulee, under the order of the Florida Railroad Commission dated October 16, 1935, the order being No. 795. The distance there is about twelve miles.

The next service was a re-routing which was covered by the order of the Commission, the original order of the Commission No. 716 and was between Tampa and Brooksville, the extension to include Tampa Shores, Clearwater, New Port Ritchie, and intermediate points. That was the order of the Commission No. 818, dated December 27th, 1935.

Q. When you refer to orders of the Commission you mean the Florida Commission?

A. I am referring in all cases to orders of the Florida Railroad Commission.

Q. Proceed.

A. The next was an extension of operations between Jacksonville and Wildwood originally covered by Order 777, so as to permit operation between Wildwood and Tampa, [fol. 1294] and that order was dated August 18, 1936, and was order No. 884.

Now, all of those operations referred to covered a highway mileage of approximately 450 miles.

We are also operating under Order No. 1025 of the Florida Commission, issued July 1, 1937, a truck service between Jacksonville and Live Oak, handling intrastate freight only, and under order No. 1026, dated July 1, 1937, a truck operation between Live Oak and River Junction, handling intrastate freight only. The distance between Jacksonville and River Junction is approximately 208 miles.

Q. So that in total mileage we are now operating something in the neighborhood of 800 miles?

A. No, it is about 658 miles.

Q. Has our experience with those operations been satisfactory, Mr. Stanley?

A. It has been very satisfactory.

Q. Have they accomplished the purpose which we have in mind, and some of which have been testified to in this proceeding here?

Mr. Kitchen: Don't you think it would be better to let the witness testify how it is satisfactory instead of experience that it has been satisfactory. Let the Board draw the conclusion.

Mr. Abeles: If you had listened to my question you would have heard that I said in respect of the testimony here.

[fol. 1295] Mr. Kitchen: I still think the board should draw the conclusions.

Chairman Matthews: He may answer the question.

A. What was the question?

(Question read.)

A. Yes.

Q. Have any of these services been discontinued since their inception?

A. None of them.

Q. Has the experience that we have had in the service now in operation encouraged us to inaugurate the service which is here sought?

A. Yes, before we undertake to obtain authority to establish any truck line operation we make a very careful study of the territory over which it is thought possible that it may be profitable to the railroad and to the public to operate such service, and when we determine in our own minds that those results will be obtained, then we endeavor to get the proper authority from the States and the Interstate Commerce Commission to establish these operations.

Mr. Abeles, I might say this if I may be permitted to do it, that what we are seeking to do is covered by the general statement which I made in the beginning of my testimony, namely, to improve the service which it is possible for us to render to the public; in other words to use these motor [fol. 1296] vehicles not so much as independent transportation facilities, as to coordinate them with our train service, and through that coordination to improve the handling of both the carload and less than carload freight.

Now, I might illustrate what I have in mind by taking the case here under consideration. I think it has been testified here that train No. 83, operating from Jacksonville to River Junction, handles both carload and less than carload freight, and that it operates as a local freight train between Live Oak and Tallahassee. Now, it is our belief that to the extent that we are able to take from that train the less than carload business, the local work it does between Live Oak and Tallahassee, that we will be able to expedite the movement of carload freight, which is also handled by that train and put it to its destination, especially that which covers

long distances, in very much quicker time; and by the same token that we will be able through the use of the trucks to handle the less than carload business to these intermediate points.

Now, I may say this, theoretically we think we know in a general way what we may do in the coordination of this service but what can actually be accomplished will only come to us with experience. As to whether or not we can handle freight to a certain point by rail and truck, take it to that point by rail and then handle it by truck, or whether it would [fol. 1297] be desirable in the public interests to handle it for the entire distance by truck, those things can only come through experience. Nobody can definitely map out just what kind of operation we are going to have.

Let me say another thing. Mr. Parsons of course is more familiar with the operation in this territory than I am, and he has testified to it. Now, it may be possible, nobody can tell that, it may be possible that you relieve Train No. 83 of the local work between Live Oak and Tallahassee, that that will enable you to so speed up that train that you can more economically handle your freight from Jacksonville to River Junction by train to make the connections with the Appalachicola Northern. We don't know whether that can be done or not, but that is one of the possibilities.

Another illustration is this, that it is necessary to close our warehouses at the larger receiving stations at a certain hour in order to take the cars that have been loaded during the day out to the yards and assemble them in a train, and have that train depart on time. I think that the closing hour at our station at Jacksonville for the receipt of freight is five o'clock. That car must be moved at that time out to the yard in order to have the train made up that it is to go out in on schedule time. Now, any freight that comes to us, destined to any station between Jacksonville and River [fol. 1298] Junction, after five o'clock in the afternoon, can be moved by truck. Otherwise it would stay in that depot until five o'clock the next day, the next afternoon. Then, I might say this, if I may be permitted to cover this in a general way, we get a great deal of interstate freight through certain gateways destined to points in Florida. The principal gateways are Jacksonville, River Junction, Montgomery, Alabama, to which point the Seaboard Air Line has a line down through Tallahassee. Now, that freight

into Jacksonville will be moved into that point by rail and by boat to the extent that it is moved by rail into Jacksonville and then by truck from Jacksonville west, we are carrying out a scheme of coordination which we had in mind as it applies to interstate shipments. In other words, the haul has been by rail up to Jacksonville, and it may be by truck west of Jacksonville in carrying it to its destination.

Q. Mr. Stanley, is the Seaboard Air Line financially able to undertake the truck service which is here proposed?

A. Yes.

Q. Have you a copy of the annual report of the Seaboard Air Line and its receivers before you?

A. Yes.

Mr. Abeles: I should like to introduce that annual report as an exhibit.

Mr. Walker: We will have no objection to the introduction of this annual report. I do not see the necessity, since [fol. 1299] it is in without objection, of having extracts read from it or references made to it in any detailed way.

Mr. Abeles: Oh no, there will not be any in detail.

Chairman Matthews: It will be received as an exhibit.

(Exhibit 2, Witness Stanley, received in evidence.)

Q. Mr. Stanley, will you state the result of operations for the year ending December 31, 1936, as shown by this report?

A. For that period the railway operating revenues of the Seaboard Air Line Railway were $38,346,055.37.

The net railway operating income, that is the sum remaining after the payment of taxes, equipment rent and operating expenses, was, $2,920,582.99.

Income from other sources amounted to $366,168.24.

The gross income of the railroad for that year was $3,276,751.23.

Q. Then is there any question of the financial ability of the Seaboard Air Line Railroad to undertake this service?

A. None, absolutely, so far as these operations are concerned, and I might say here, Mr. Abeles, that we consider what we are attempting to do is just a part of our rail operations, and these trucks under our theory of this case are just as much a part of our facilities as our locomotives and our boxcars.

Q. Now Mr. Stanley, with regard to the financial result of [fol. 1300] the services which we are proposing here, taken

apart from their necessarily close relationship to rail operations, can you state whether in your judgment they will be financially profitable?

A. That is my opinion.

Q. Is it feasible to separate the actual revenues and expenses derived from the truck operations from revenues and expenses of the rail service?

A. No it is not possible or feasible, and it would be extremely expensive. As I stated a while ago, however, a shipment of freight moves, whether by rail or by truck, and whether partially by each of those instrumentalities, it is going to move on a railroad bill of lading, and the charges for that transportation in either instance will be those provided for in the published tariffs of the railroad. It would serve no good purpose whatever if the railroad had to set up accounts showing how much their earnings were from truck operation and how much from rail operation, and then show separately and independently the cost of the truck operation.

By Examiner Yardley:

Q. Is the Seaboard Air Line willing to adopt any method of accounting prescribed by the Commission for truck lines?

A. The Seaboard Air Line is willing to comply with any rules of the Commission. Our theory is that it would be [fol. 1301] unnecessary and unduly expensive to undertake to set up separate accounts showing the income and disbursements of the truck lines, when that is just a part of our rail operation, auxiliary to it.

By Mr. Abeles:

Q. Mr. Stanley, frequent references have been made on cross-examination of previous witnesses to the attitude of the Seaboard Air Line towards other independent motor carrier service in this territory. What have you to say on that subject?

A. I have been an officer of the railroad and of the receivers charged with the duty of determining whether or not opposition should be made to applications of independent motor carriers to establish routes in the territory that the Seaboard serves. A great many of the independent operations in Seaboard territory, and I think I might safely say the State as a whole, are covered by certificates granted

under the grandfather clause of the motor vehicle act, and I think that is true as to those operations that probably come under the grandfather clause of the Federal act, most of them. Now, when applications are filed to establish truck routes in a territory that is served by the railroad, we have usually opposed them and we have opposed them upon those grounds, that throughout this territory in Florida the density of traffic is not very great; that there is not sufficient business in the territory to justify the operation [fol. 1302] of competing forms of transportation; and we have taken the position that our rail service in view of those facts is sufficiently adequate to take care of the traffic that is available in the territory. We have endeavored to show that fact, that our service is adequate when measured by the amount of traffic to be handled.

Now, what we are seeking to do is not to establish a new and different method of transportation, but to improve a service which we believe if considered solely from the standpoint of rail transportation is adequate, by supplementing truck service to handle that business.

By Examiner Yardley:

Q. The question, according to my understanding, is why you do not desire to interchange with truck lines.

A. I didn't understand it that way.

Mr. Abeles: Oh, no, Mr. Examiner, Mr. Stanley's reply was quite responsive to my question, but I am coming to that question now.

By Mr. Abeles:

Q. Had you finished your answer?

A. Yes, sir.

Q. Now, Mr. Stanley, as suggested by the Examiner, it might be appropriate to comment upon the position of the railway with regard to the interchange of traffic with other independent truck lines. That has been touched on before, but I should like to have you amplify that.

[fol. 1303] A. We have been opposed to that so long as the Interstate Commerce Commission does not require it. There are a good many reasons why we object to it. I will name a few of them. One is that it would involve the keeping of accounts with innumerable independent truck

operations, the putting in of rates and divisions with them, all of which would involve a very substantial cost.

The second reason is that we cannot control the schedules of our competitors, their truck schedules, and in order to bring about the coordination which we have in mind it is essential that under one management there should be control both of rail and truck schedules.

The third reason is—and I disclaim any intention of reflecting upon the protestants here—that there are good and bad operators, there are some who are strong financially and some that are weak financially, there are some whose morals—and I use that word in its broadest sense—are good, and some whose morals are not good. So, we do not think it is desirable in the public interests that through routes and divisions be put in with independent truck lines.

Those are our reasons.

Q. Let me ask you in particular, Mr. Stanley, with regard to that question—How as a practical matter could we exchange with the L. & L. Line, assuming that the L. & L. Lines operate——

A. Let me say one other thing which is a strong argu- [fol. 1304] ment. I was about to overlook it. If we made that interchange, as I understand the contentions of the protestants in this case, it would be necessary for us to short haul ourselves, or, to explain the meaning of that word, to give up a part of the revenue and a part of the haul, which revenue we were capable of earning and capable of making.

Take this illustration: Suppose that in interstate commerce the Seaboard Air Line has a shipment of freight moving from Charleston, South Carolina to Tallahassee, Florida. The Seaboard Air Line serves both of those points. Now, it is inconceivable that we would be required in order to expedite that freight by the movement of a truck from Jacksonville to Tallahassee, that we should give up the hauling of that business for the entire distance between Jacksonville and Tallahassee.

Q. How about the business moving into Jacksonville by boat, destined to one of these intermediate points?

A. Moving by boat—Why, we wouldn't have any haul at all. I take that extreme illustration to show how it would affect us. If we hauled it to some intermediate point, the result would be the same. Suppose we transported it

by rail to Live Oak, destined to Tallahassee, and then turned it over to the trucks, is there any good sound economic reason for that? I can't see one. There would be an unnecessary transfer at that point, and it would result in the Seaboard Air Line giving up a substantial part of the [fol. 1305] haul, and as a result a substantial part of its earnings.

Q. Would there be any complications arising from the interchange operation between the rail line and the truck line as compared with the same transfer at a transfer point between one agency of the railroad and another agency of the railroad, with respect to the employees required, particularly as to checking of the cargo, et cetera?

A. Of course it would necessitate a more careful check than you would have to have at present, in order that each company might protect itself. Each would have to be represented by employees charged with the duty of supervising that transfer. Of course it might possibly be handled through joint employees, if that is what you mean.

Mr. Abeles: That is all.

Chairman Matthews: You may cross-examine.

Cross-examination.

By Mr. Walker:

Q. Mr. Stanley, just one or two questions. You spoke of these various orders from the Florida Railroad Commission aggregating this 658 miles of truck operations in Florida?

A. It was not quite that much in Florida. That included some mileage in North Carolina.

Q. Now the majority, in fact all of the orders from the Railroad Commission of Florida, justifying that service, with the exception of the one of July, 1937, which you [fol. 1306] obtained under House Bill 138, is it not a fact that all those orders with that exception were for temporary substituted service, expressly limiting it to such time as an alleged emergency existed?

A. I think that several of these orders contain language providing that it was in substitution of train service, and still left in the bosom of the Commission the right to revise them or review them.

Q. Is it not a fact that the position of the Seaboard Air Line was stated in each one of these applications as desiring it temporarily rather than permanently?

A. No, I don't think that is true; I don't recall the applications.

Examiner Yardley: Mr. Walker, wasn't the evidence given for the purpose of showing experience?

Mr. Abeles: Yes, sir.

Mr. Walker: It was on the theory of taking off of freight trains to meet various emergencies. Our object in going into this is to show that there is no intent on the part of the Seaboard Air Line for permanency of any of this thing, but it is temporary, just so long as independent motor truck competition can be stifled, and then return to rail service.

Examiner Yardley: I understand that this testimony was offered just for the purpose of showing experience.

[fol. 1307] Q. Mr. Stanley, these two applications which are here consolidated are the last of ten applications of like nature before the Interstate Commerce Commission throughout Southern Territory; are they not?

Mr. Abeles: Mr. Chairman, I don't see any relevancy in that. I have no particular objection to disclosing the facts which are already known to the Commission, but I would like to avoid irrelevant matter, and what have other applications now pending before the Commission to do with this case. It is beyond me unless Mr. Walker intends in some way to clear that up, and I don't believe he can do that.

Mr. Walker: That is exactly what I am trying to do, show that it is a correlated operation covering six states. That has been brought out by Mr. Stanley himself, he spoke to the effect that part of this 658 miles was in North Carolina, etc. It is pertinent I think and I would like to have the record so show.

Mr. Abeles: The record shows it already, it is in the Commission's records surely.

Chairman Matthews: I see no objection to Mr. Stanley answering the question.

A. I don't think you went far enough, I think there are some others pending before the Commission than the ten that you evidently have in mind.

Q. They are a part of the one main Seaboard Air Line [fol. 1308] service, and intended as supplemental service thereto, are they not?

A. Only in the territory where the authority is sought to establish truck service.

Q. And that is substantially in six states of the South, is it not?

Examiner Yardley: Hardly six states, it would not be all of the rail line. I think the Commission has these applications on file, and they know what is in the applications, which are more or less before the Commission now as to what should be done.

Mr. Walker: If this joint board can take judicial notice of the ten or more applications, and the way they are correlated together, that is agreeable to me, but I think when the time comes to argue this on brief it will be very important on our part to show that this Commission has no jurisdiction because of their being six states, and according to the motor carrier act one joint board cannot pass on that.

The Witness: May I interrupt just a minute to make a statement which I recall that I overlooked, one operation that I intended to mention.

Examiner Yardley: This is for the purpose of experience and I don't think it is necessary.

The Witness: It is in Georgia, where we have an operation between Ryan and Lyons, Georgia.

Q. At least one of these applications is not local in its [fol. 1309] nature, but is between two states; isn't it?

A. Not as far as Florida is concerned.

Q. I am talking about the ten applications. At least one of them is between points in Virginia and North Carolina, is it not?

A. There are pending now before the Interstate Commerce Commission other applications for authority to operate truck lines. Two or three of those are interstate in so far as they are physically operated in more than one state, North Carolina and South Carolina.

Q. In other words the proposed route physically is between two states?

A. Some of them. None in Florida though.

Q. However, the entire set-up as compared to your united Seaboard Air Line system, is merely supplemental and

auxiliary to the almost national set-up of the Seaboard Air Line set-up, is it not?

A. If you mean by that, Mr. Walker, that it is the intention of receivers of the Seaboard Air Line Railway to gradually couple up this service so that we may have truck service over the entire railroad, absolutely no.

Q. I mean that according to your system of bookkeeping as you just testified, according to the auxiliary nature of this operation as you have testified, from a financial standpoint, and from an operating standpoint, it is actually a part of one united system, is it not?

[fol. 1310] A. From a financial standpoint any money that might be allocated to the trucks for the service that they perform goes into one common treasury, and is kept under one system of account, and from an operating standpoint it has nothing to do with the operation of the Seaboard Air Line as a whole.

Q. The legal title to each one of these certificates, if granted, will be in the present applicant; will it not?

A. Certainly.

Q. So after all it is in effect one financial octopus, if we might say that, operating in six states of the South?

Mr. Abeles: I have no objection particularly if you want to characterize it, except for the implication.

A. No, Mr. Walker, the Seaboard Air Line is a system of railroads operating in six different states. It has various forms of operation. The operation of its rail-bus from Jacksonville to River Junction must be considered solely in respect to the territory that that operation covers. It has nothing in the world to do with the operation of a local train or a through train up in Virginia, and so with these trucks.

Q. If that is true, you are actually proposing to divert freight from the rails to your trucks?

A. Not at all. We propose as far as we can to use the trucks as an auxiliary to our rail service, and I might make this observation, that where the volume of traffic is sufficient there is no form of transportation of which I have [fol. 1311] knowledge that is as cheap as that by rail, but the service to the public can be improved by rail in certain instances by coordinating those two services.

Q. If you had no truck lines in operation throughout this territory you must needs either carry it all by rail or ex-

change with some existing truck line. Now, you have stated that it would be your policy, for reasons satisfactory to you, that it is unwise to interchange with truck lines. Therefore you have to carry it all yourself by rail, or actually divert it to your own trucks. That necessarily follows.

A. We would not necessarily have to divert it or interchange with another truck line. We would probably confine ourselves, under the conditions which you have named, solely to rail, but there are a certain number of shippers in the United States and in this territory that prefer to deal with the railroads rather than independent truck lines, and we feel that as to that class of people it is our duty to give them the very best service we can.

Q. That is a constantly diminishing class; is it not?

A. No, I don't think so, I think it is a growing class, because I think that after all people have actually come to their senses.

Mr. Walker: That is all.

By Mr. Kitchen:

Q. Mr. Stanley, when you speak of coordination of rail and motor carriers, you are referring solely to that co-[fol. 1312] ordination between facilities of your own line, is that right?

A. I am referring to the coordination of those two facilities as they relate to one common management and control.

Q. Then is it your understanding that that coordination shall be within one corporation and no coordination with industry as a whole?

A. I don't know that I know what you mean, Mr. Kitchen.

Q. Did you state that your coordination between rail and motor carrier was confined to the Seaboard Air Line solely?

A. That is what I am speaking of. That is the kind of coordination that I have been endeavoring to tell about.

Q. And that is not the kind of coordination that you are trying to interpret as to the meaning of the Motor Carrier Act; is it?

A. I am not here to interpret the Motor Carrier Act, that is for the board and the Commission to do.

Q. Now, on this so-called coordination, did you or did you not testify that one of the reasons for your not exchanging with truck companies was that you could not see any reason for short hauling your line, is that correct?

A. I said that that would be one of the results of it.

Q. That would be one of the results?

A. Yes.

Q. Now, is it or is it not a fact that your reason for not [fol. 1313] coordinating the transportation facilities of rail and motor vehicles of other carriers other than motor vehicles of your own, is because of the revenue that you wish to save for your company?

A. Why of course, naturally we want to control all of the business which we can, and that is the reason we are trying to give the public the very best service that we can, that is one of the reasons.

Q. Then I ask you is it or is it not a fact that this is an attempt on the part of the railroad again to create a transportation monopoly?

A. Absolutely no, not so far as we are concerned, and if you will let me I will give you a very simple illustration. When I was a boy we used to use old fashioned wood cook-stoves and if we wanted to get any hot water we had to put a tea kettle on the stove and heat it up. Then came along the water-back to that stove, by which we could use just the same instrumentality, the same fire, and the same stove for cooking, but by putting that water-back there, and a tank to hold the water, we could make that one facility give us what we used to have to get through the teakettle. In a way that illustrates what we are asking. Here is our railroad, we have got to operate it. We are charged with the duty of giving to the public the very best service that we can. We are still going to operate the old cook stove, but [fol. 1314] as an adjunct to it we want to put in this water-back and give the people a little quicker service than we used to be able to give them, and I think we are entitled to do that. It is inconceivable to me that the policy of the government would be to destroy the railroads.

Q. Mr. Stanley, did you not testify, or did you testify that the future might develop great transportation of freight by motor vehicles from the territory which your line serves?

A. I don't think I testified to anything like that one way or the other.

Q. I will ask you then what effect if any, if your truck service should prove to be far more efficient than that of the rails, what effect would that have on the rail facilities now existing?

Mr. Abeles: If you want to answer that question all right, but I think it is clearly improper cross examination, and goes beyond the direct testimony that he gave.

Mr. Kitchen: I will withdraw the question.

Chairman Matthews: Read the question.

(Question read.)

A. In what way? Would it cause a cessation or curtailment of operation by rail? I cannot by the wildest stretch of imagination see any possibility of truck service supplanting the railroads. They are the backbone of our transportation system, and they have got to remain here, but I can see the possibility of the coordinated use of rail and truck [fol. 1315] service very much improving not only the service the railroads can render to the public, but possibly their financial condition.

Q. Speaking of finances, just for the record, is the Seaboard Air Line in the hands of receivers now?

A. Yes sir.

Mr. Abeles: The application is by the receivers.

A. (Continued.) It has been since December 23, 1930, with the railroad unable to pay the interest on its bonded indebtedness except to a very limited extent, and we are seeking very earnestly by every honorable means to get out of that receivership.

Q. Now, you testified as to various operations between the State of Florida and other places by motor vehicle, showing the experience of the Seaboard Air Line in the operation of trucks, now, I want to know whether or not that experience with motor vehicle transportation was confined solely to intrastate carriage, or interstate carriage, or both?

A. Both.

Q. Then I will ask you—I will enumerate each of them that you have given. Under Order No. 590 of the Commission, which is from Drifton to Monticello, do you engage in handling interstate freight over that line?

A. I might simplify your question by saying that as to all of these operations except those covered by orders 1025 and 1026, we are handling both interstate and intrastate [fol. 1316] freight.

Q. You are certain of that?

A. Of course I am.

Q. You know it and are positive of that?

A. Yes sir.

Q. You acquired or inaugurated a service by order dated December 27, 1935, and issued by the Florida Railroad Commission, authorizing operations to L. R. Powell, Junior, and Henry W. Anderson, as receivers of the Seaboard Air Line Railway Company, Norfolk, Virginia, for an extension of its certificate of public convenience and necessity No. 83, authorizing the transportation by motor vehicle of less than carload freight between Tampa and Brookville, serving Tampa Shores, Safety Harbor, Bellwood, Coachman, Clearwater, Tarpon Springs, Elfers——

Mr. Abeles: Is it necessary to recite every one of these points, Mr. Kitchen? Can't we save a little time here?

Mr. Kitchen: I have just two or three more.

Q. —New Port Ritchie, Fivay, Greenfield, Loyce, Masury Town and Ayers. Now, you did not commence that operation until after the 27th day of December, 1935; is that correct?

A. We did not commence the change in the route and the extension of the authority which was granted in the original order until after that date.

Q. You say you carry interstate freight over that route? [fol. 1317] A. Yes sir.

Q. Do you have authority from the Interstate Commerce Commission to do so?

A. I think so, under our interpretation of the law. That is one question that is involved in the cases that are already presented to the Commission.

Mr. Abeles: Mr. Chairman, I have not objected to this line of cross examination because I wanted to see where it led to. As the Examiner pointed out, those operations were testified to purely for the purpose of showing the experience of the applicant. Whether they are authorized by the Commission or not, it seems to me is entirely irrelevant.

Mr. Kitchen: Possibly the Commission would think it goes into the fitness of the applicant. I think the Examiner asked whether they would abide by the rules and regulations of the Interstate Commerce Commission——

Examiner Yardley: Have you finished that line of questioning?

Mr. Kitchen: Yes.

Examiner Yardley: Please do not take up any more time with it.

The Witness: It is our understanding of the motor vehicle act that where an operation is confined physically solely to one state, under authority of the State regulatory body, that we have a right to register the State certificate [fol. 1318] with the Interstate Commerce Commission, and we have asked in every one of these cases for authority to register.

Q. Is it or is it not a fact that the Seaboard Air Line does not operate solely within the State of Florida?

A. We operate in six different states.

Q. Then it is not an extension of an operation solely within one state.

A. The physical operations—I don't think we should go into that. I have stated my position. It is for the Commission to determine whether our construction of the law is correct or not.

Q. Mr. Stanley, would your company make interchange arrangements with a truck company?

A. I have already stated that we do not want to do it.

Q. Now, I want to know would you do it?

A. We won't do it unless we are compelled to do it.

Q. And compelled by whom?

Examiner Yardley: He stated that on direct.

Mr. Kitchen: That is all.

By Examiner Yardley:

Q. Mr. Stanley, I understand that freight handled from Jacksonville to Tallahassee or any other point will be delivered at the freight station, and then delivered to the consignee by your pick-up and delivery service?

A. Yes, sir, the movement will be entirely from railroad [fol. 1319] depot to railroad depot, and then of course at destinations it will be handled either by the consignees coming for it or by pick-up and delivery trucks.

By Mr. Bliss:

Q. Would you mind naming the six states in which the Seaboard Air Line operates?

A. Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama.

Q. Isn't there a rather large proportion of your mileage in Florida?

A. Yes.

Q. You twice mentioned railroad bills of lading; is there any difference between a railroad bill of lading and a truck bill of lading?

A. Except that they are issued by two different concerns. I don't know what provisions a truck bill of lading contains. There is a vast amount of difference between a promissory note given by me and one given by you. It may be in the same language, but the signature is different.

Q. You are referring not to the form of the bill of lading but you are asserting that there is a grave financial responsibility?

A. I was emphasizing the fact that so far as the public is concerned our contract is in the bill of lading.

Q. You mean a railroad's signature.

A. Sure.

[fol. 1320] Q. As a matter of fact under this proposed service a shipper, particularly the interstate shipper, say in New York who might forward a shipment destined to Havana, Florida, will not know whether the shipment is handled by rail or truck?

A. And he will not care, all he is interested in is to get it there safely and quickly.

Q. And it will vary sometimes will it not, depending on conditions, the loading, the method of handling, that will vary from day to day?

A. That is what I tried to emphasize in the first instance we are offering here. We are giving the board the benefit of such things as we think will be available on this combined service immediately, but as we study it with a view to expediting freight, what we have in effect today may be entirely different tomorrow.

Q. You mentioned your reasons for not wishing to interchange with independent motor carriers. Do you have an agreement with other rail lines that take that same attitude?

A. No sir, no agreement.

Q. Your company can vary from that policy in a particular case?

A. Well, of course I might make a contract with you tomorrow when I would not consider doing it today. Conditions might change but that is our present policy.

[fols. 1321-1322] Chairman Matthews: Are there any other questions of the witness?

Mr. Abeles: That is all.

(Witness excused.)

Chairman Matthews: How about briefs?

Mr. Abeles: May we have briefs in thirty days?

Examiner Yardley: Is that sufficient time?

Mr. Abeles: It is time enough for me, and I would like to get this thing underway just as quickly as possible.

Examiner Yardley: Briefs will be due thirty days from date, and if anyone desires an extension the request must be in Washington seven days before the brief date.

Chairman Matthews: The board will take the matter under advisement and the hearing is closed.

(Whereupon at 12:30 p. m. on the 20th day of October, 1937, the hearing was closed.)

[fol. 1323] Before the Interstate Commerce Commission

MC 86687 (Sub. 8)

Application of Seaboard Air Line Co. for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce in the State of South Carolina, between Greenwood and Great Falls, South Carolina, via Chester, South Carolina.

Federal Building, Columbia, S. C.,
October 27, 1937, 10:00 a. m.

Before: Joint Board No. 177, composed of: Hon. J. C. Darby, Member, South Carolina Public Service Commission, Columbia, S. C., Chairman.

Present: Hon. W. W. McCaslin, Post Office Building, Bureau of Motor Carriers, Charlotte, N. C., Examiner.

Appearances:

Chas. T. Abeles, Seaboard Air Line Ry. Bldg., Norfolk, Virginia, appearing for applicants.

[fols. 1324-1325] Proceedings

Chairman Darby: The Interstate Commerce Commission has set for hearing at this time and place Docket No. MC. 86687, Sub. 8, application of the Seaboard Air Line Railway Co. (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation, of S. A. L. Railway Bldg., Norfolk, Virginia, for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of South Carolina, between Greenwood and Great Falls, South Carolina, via Chester, South Carolina.

The Joint Board requests Mr. W. W. McCaslin, who has been assigned to assist and advise the Joint Board in this proceeding, assist in developing the record.

The Examiner: No free copies of the transcript of testimony will be distributed in this case. Persons desiring transcript should arrange with the reporter to obtain same. The Commision requires that all persons appearing in a representative capacity in these cases, unless they be officers or employees of the corporate party, members of a partnership, or unless they are representing themselves, shall be admitted to practice before the Commission before they can be allowed to appear.

The Chairman: Who appears for the applicant?

[fol. 1326] Mr. Abeles: Chas. T. Abeles, of Norfolk, Virginia.

The Chairman: Are there any interveners?

(No response.)

Mr. Abeles, you are admitted to practice?

Mr. Abeles: I am.

The Chairman: You may proceed.

Mr. Abeles: Mr. Chairman, before proceeding with the evidence I should like to make a preliminary statement. The application here requests a certificate of public convenience and necessity under the Motor Carrier Act of 1935, authorizing the operation for the transportation of property, mail and express between Greenwood, S. C. and Great Falls, S. C. It is the position of the applicant that since the route proposed is confined within the State of South Carolina and neither crosses nor reaches a state boundary, that under the provisions of Section 206 of the Motor Carrier Act no certificate of public convenience and

necessity is required. The application for a certificate has, therefore, been made at the—with a reservation which I now desire to state, that no such certificate is required, but that under the regulations of the Commission all that the applicant is required to do is register such application. I may state that that contention has been made in previous cases which are now pending before the Commission and that I assume that such disposition may be made of that [fol. 1327] contention in those previous cases, will be made applicable likewise to the case here under consideration.

I should have stated previously that we have a certificate from the State of South Carolina authorizing the operation for which interstate authority is here requested, in intrastate commerce.

The Examiner: However, Mr. Abeles, might I inquire at this point, there is no contention by the applicant, is there, that there will not be actual physical handling of interstate shipments although they will be handled only intrastate insofar as this operation is concerned?

Mr. Abeles: Insofar as the transportation by highways by truck is concerned, that is correct. They will be handled by the truck, shipments moving continuously in interstate commerce, that is, the origin or destination of which is outside the State of South Carolina.

With that preliminary statement, I am ready to proceed, Mr. Chairman. I will call Mr. Bowen.

J. H. Bowen was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Please state your name, residence and occupation.

A. J. H. Bowen, Superintendent, Georgia Division, Atlanta, Ga.

[fol. 1328] Q. What does the Georgia Division include, Mr. Bowen?

A. The mileage from Birmingham, Ala. to Monroe, N. C. including the branches.

Q. Then the line between Greenwood and Great Falls is under your jurisdiction?

A. Yes, sir.

Q. Mr. Bowen, how long have you held this position?

A. Since August 25, 1936.

Q. How long have you been with the Seaboard Air Line Railway in various capacities?

A. Thirteen years.

Q. As operating employee or official?

A. In the operating department.

Q. Then you are thoroughly familiar with the operating conditions of the territory covered by this application?

A. Yes, sir.

Q. Will you now state what service we are proposing to establish in this proceeding?

A. Trucking service between Greenwood, Chester and Great Falls, to operate on turn-around basis between Greenwood and Great Falls.

Q. What is the approximate one-way passage?

A. 100 miles.

Q. Does the route parallel the rail line throughout and if not explain the points of digression?

[fol. 1329] A. The route parallels the line between Greenwood and Chester on South Carolina Highway No. 7 and branches off at Chester Highway No. 97 which does not parallel our line to Great Falls, but there are no intermediate stops between Chester and Great Falls.

Q. Does the Seaboard reach Great Falls?

A. Yes, sir.

Q. Where does the Great Falls branch diverge from the main line?

A. At Catawba, South Carolina.

Q. Catawba is approximately how far from Chester?

A. 20 miles north of Chester.

Q. Do I understand that there is no highway paralleling our rails between Catawba and Great Falls?

A. No, there is not.

Q. In order to reach Great Falls by truck it is necessary to leave the rail route?

A. Yes, sir.

Q. Mr. Bowen, I'm handing you a map and should like you to state whether it shows in black, correctly, the routes of the proposed truck service?

A. You mean in red, don't you?

Q. I mean in red, ye-, sir.

necessity is required. The application for a certificate has, therefore, been made at the—with a reservation which I now desire to state, that no such certificate is required, but that under the regulations of the Commission all that the applicant is required to do is register such application. I may state that that contention has been made in previous cases which are now pending before the Commission and that I assume that such disposition may be made of that [fol. 1327] contention in those previous cases, will be made applicable likewise to the case here under consideration.

I should have stated previously that we have a certificate from the State of South Carolina authorizing the operation for which interstate authority is here requested, in intrastate commerce.

The Examiner: However, Mr. Abeles, might I inquire at this point, there is no contention by the applicant, is there, that there will not be actual physical handling of interstate shipments although they will be handled only intrastate insofar as this operation is concerned?

Mr. Abeles: Insofar as the transportation by highways by truck is concerned, that is correct. They will be handled by the truck, shipments moving continuously in interstate commerce, that is, the origin or destination of which is outside the State of South Carolina.

With that preliminary statement, I am ready to proceed, Mr. Chairman. I will call Mr. Bowen.

J. H. Bowen was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Please state your name, residence and occupation.

A. J. H. Bowen, Superintendent, Georgia Division, Atlanta, Ga.

[fol. 1328] Q. What does the Georgia Division include, Mr. Bowen?

A. The mileage from Birmingham, Ala. to Monroe, N. C. including the branches.

Q. Then the line between Greenwood and Great Falls is under your jurisdiction?

A. Yes, sir.

Q. Mr. Bowen, how long have you held this position?

A. Since August 25, 1936.

Q. How long have you been with the Seaboard Air Line Railway in various capacities?

A. Thirteen years.

Q. As operating employee or official?

A. In the operating department.

Q. Then you are thoroughly familiar with the operating conditions of the territory covered by this application?

A. Yes, sir.

Q. Will you now state what service we are proposing to establish in this proceeding?

A. Trucking service between Greenwood, Chester and Great Falls, to operate on turn-around basis between Greenwood and Great Falls.

Q. What is the approximate one-way passage?

A. 100 miles.

Q. Does the route parallel the rail line throughout and if not explain the points of digression?

[fol. 1329] A. The route parallels the line between Greenwood and Chester on South Carolina Highway No. 7 and branches off at Chester Highway No. 97 which does not parallel our line to Great Falls, but there are no intermediate stops between Chester and Great Falls.

Q. Does the Seaboard reach Great Falls?

A. Yes, sir.

Q. Where does the Great Falls branch diverge from the main line?

A. At Catawba, South Carolina.

Q. Catawba is approximately how far from Chester?

A. 20 miles north of Chester.

Q. Do I understand that there is no highway paralleling our rails between Catawba and Great Falls?

A. No, there is not.

Q. In order to reach Great Falls by truck it is necessary to leave the rail route?

A. Yes, sir.

Q. Mr. Bowen, I'm handing you a map and should like you to state whether it shows in black, correctly, the routes of the proposed truck service?

A. You mean in red, don't you?

Q. I mean in red, ye-, sir.

Mr. Abeles: Mr. Chairman, I should like to offer this as Applicant's Exhibit No. 1.

[fol. 1330] (Exhibit No. 1, Witness Bowen, is marked for identification.)

The Chairman: Without objections, it will be received in evidence as Exhibit No. 1.

(Exhibit No. 1, Witness Bowen, is received in evidence.)

By Mr. Abeles:

Q. Will the proposed truck service serve any station not reached by the Seaboard rails?

A. No, sir.

Q. What class of traffic will be handled by these trucks?

A. Less than carload freight only.

Q. I understand that this is exclusively station to station service?

A. That is correct.

Q. By station to station I mean stations serviced by the Seaboard rails?

A. Yes, from *to* depot to depot.

Q. Now will you describe generally the purpose which we have in mind in inaugurating the proposed truck service?

A. By the inauguration of this truck service we expect to expedite the handling of l. c. l. freight to and from all stations between the points named, Greenwood and Great Falls, due to the fact that our train service cannot be so arranged that it will give the smaller towns the same service as the larger points. In other words we would give the points between these stations overnight service on an ex-[fol. 1331] pedited service of from 12 to 24 hours. We would also save some operating expenses due to not having to stop the local freight at some stations to load and unload l. c. l. merchandise. This would also enable us to do certain station switching and handling of carload shipments earlier at the stations than we are now doing.

Q. Having generally described what we expect to accomplish by the establishment of this service, Mr. Bowen, I should like to have you explain in some detail how these objectives will be reached. First, will you state the local train service now performed over these routes.

A. At the present time we are operating the local freight southbound daily, except Sunday, which leaves Monroe

around 10:00 a.m. and reaches Greenwood around 10:00 p.m. We have no local northbound service on this route that loads or unloads l.c.l. merchandise. This necessitates merchandise being handled on train No. 82, which is a through northbound train but sets out cars at certain set-out points and is worked back to local delivery points by the Southbound local 61.

Q. In other words on local traffic moving northbound, do I understand correctly that there was to be a back haul on the local southbound No. 61?

A. Yes, sir. That is correct.

Q. Will you now state the proposed schedule on which the [fol. 1332] truck service will operate?

A. This truck will leave Greenwood at 5:30 a.m. and arrive at Chester 10:30 a.m.; leave Chester 11:00 a.m., arrive Great Falls 12:00 noon; leave Great Falls 1:00 p.m.; leave Chester 2:15 p.m. and arrive Greenwood 5:30 p.m.

Q. I wish you would now explain the improvement in the service on l.c.l. shipments by a specific example of an l.c.l. shipment which will be handled by truck.

A. As an illustration, merchandise from Atlanta for Cross Hill, S. C., a station 15 miles north of Greenwood. This shipment now leaves Atlanta at 10:30 p.m. on train No. 12, which is a mixed passenger train, and arrives at Clinton at 4:44 a.m., a set-off point for train No. 12, and is returned to Cross Hill by the local freight which arrives at Cross Hill around 7:00 p.m., which is of course too late for that day's delivery.

Q. I wish you would state whether Clinton is north or south of Cross Hill?

A. Clinton is north of Cross Hill.

Q. So this is a specific example of a movement which has to be back hauled through the use of train service alone?

A. That is right.

Q. How would this shipment be handled if the proposed truck service were in operation?

A. This shipment would be loaded on Greenwood, S. C. and would leave Atlanta at 10:30 p.m. on train No. 12, ar- [fol. 1333] riving at Greenwood at 3:50 a.m.; would be handled by the truck leaving Greenwood at 5:30 a.m., that morning, arriving at Cross Hill at 6:00 a.m., which would effect a saving of 24 hours.

Q. Would there be similar savings in the delivery of l.c.l. shipments at all points on the proposed truck routes?

A. Yes, sir. With our present service the local southbound train which makes l.c.l. deliveries on this route does not reach the stations until late afternoon.

Q. Whereas by truck when would the deliveries be made?

A. In the morning.

Q. Now, will you give an example of a l.c.l. shipment moving southbound?

A. Shipments that are now being handled to this division from the north are set out at Chester by train No. 83 at around midnight. These shipments are transferred to the local freight car and are forwarded south by the local freight leaving Chester around 2:30 p.m. and are worked.

Q. Two-thirty p.m. when?

A. The next day at 2:30 p.m., and are worked at the various stations between Chester and Greenwood, Deliveries generally being too late for that day's business.

Q. How would these shipments be handled with the aid of the truck service?

A. All shipments received from the north would be forwarded to Greenwood, S. C., on trains Nos. 85 and 83 [fol. 1334] No. 85 would handle direct to Greenwood l.c.l. shipments from Portsmouth and Richmond arriving at Greenwood at 9:45 p.m.

Q. Richmond, Virginia?

A. Yes, Richmond, Virginia. Arriving at Greenwood at 9:45 p.m. Other shipments from various other northern points would arrive at Greenwood on through train No. 83 at 4:30 a.m. The cars containing this merchandise would be worked and forwarded north by truck leaving Greenwood at 5:30 a.m. which would expedite the arrival and delivery of this merchandise at least 24 hours.

Q. Up to this point, Mr. Bowen, we have been discussing inbound movements into the local territory. Can you give us an example of the improvement in service on outbound movements?

A. At the present time l.c.l. shipments are moved southbound by the local freight regardless of destination. For example: a l.c.l. shipment from Carlysle, S. C., to Richmond, Va., would now be moved by the southbound local No. 61 to Greenwood, which is the concentrating point of all merchandise in this territory and would be moved from Greenwood by No. 82 at 1:45 a.m., that night if No. 61 arrived at Greenwood in time for the cars to be worked and

if not the next day by train No. 88, which leaves Greenwood at 4:00 p.m., arriving at Hamlet, N. C. around 5:00 the next morning and Richmond the following morning at 6:00 a.m.

Q. You say the next morning, you mean the second morning?

[fol. 1335] A. The second morning.

Q. That makes it arriving at Richmond when?

A. The third morning.

Q. How would the same shipment be handled by truck service?

A. This shipment would be carried by truck from Carlysle to Greenwood, arriving there at 5:30 p.m. which would enable the concentrating point to handle this shipment and forward direct to Richmond on train No. 82, departing from Greenwood at 1:45 a.m. and arriving at Richmond the second morning at 6:00 a.m., or a saving of 24 hours when the Greenwood schedule which connects with No. 82 is missed.

Q. I understand from the explanation you have just made, Mr. Bowen, that the saving you have described will be effective when the connection between train No. 61, between local southbound train No. 61, and northbound through train No. 82?

A. That is correct.

Q. How often is that connection missed now as a practical matter, Mr. Bowen?

A. We miss it about three nights in the week.

Q. And on those three nights the use of truck service would advance the deliveries at Richmond and other northern points by about 24 hours?

A. Yes, sir.

Q. Please take now an outbound shipment moving south to Atlanta or points beyond.

[fol. 1336] A. A shipment now forwarded from Carlysle destined to Atlanta or beyond would be handled by the local freight leaving Carlysle around 2:30 p.m. arriving at Greenwood around 10:00 p.m. too late to be transferred to and handled on train No. 85 that night. Therefore, this shipment would not leave Greenwood until the next morning on train No. 83 at 4:30 a.m. arriving at Atlanta at 3:30 p.m. too late for that day's delivery. If this shipment were handled by the truck it would leave Carlysle around 3:00 p.m. arriving at Greenwood 5:30 p.m. and would be for-

warded on train No. 85 from Greenwood at 9:45 p.m. arriving at Atlanta 4:30 o.m. or a saving in delivery of approximately 24 hours.

Q. Now, you mentioned specifically Carlsyle, Mr. Bowen. Is this typical of other stations in this local territory?

A. It is.

Q. And would the same improvement which you have just described with reference to Carlsyle also be effective so far as other local stations on this route are concerned?

A. It would.

Q. Mr. Bowen, do l.c.l. shipments move from this territory in substantial volume to points beyond the Seaboard?

A. Yes, through connections at Atlanta and Birmingham in package cars loaded for points beyond.

Q. Do I understand that the movement of l.c.l. shipments [fol. 1337] handled in these cars will be expedited in the manner you have just described with regard to shipments from Carlysle?

A. Yes, by handling these l.c.l. shipments on the truck arriving at Greenwood at 5:30 p.m. we could forward them on train No. 85 leaving Greenwood the same evening at 9:45 p.m.

Q. Will any benefit be derived from relieving your local southbound train No. 61 of the loading and unloading of l.c.l. shipments at local points on this route?

A. Yes, it will enable us to do the switching and picking up from the various stations assuring the arrival of train No. 61 at Greenwood early enough to make the connection with train No. 85 with the southbound shipments which train departs from Greenwood at 9:45 p.m. This connection is now frequently missed.

Q. Then the carload movements carried by train No. 61 will this be advanced 12 hours by making connection with train No. 85?

A. Yes, sir.

Q. About how much?

A. 12 or 24 hours.

Q. From what you have said, Mr. Bowen, do I understand that practically all of the inbound and outbound l.c.l. movements from this territory will be materially expedited through the use of the proposed truck service.

[fol. 1338] A. Yes, sir, it will in practically every instance be advanced by not less than 24 hours.

Q. Would it be physically possible, Mr. Bowen, to accomplish this same improvement by additional train service?

A. It would be physically possible to do almost anything by additional train service, but the cost of trains would, with the limited volume of available traffic, be prohibitive. By the proposed service we will accomplish the improvement with a maximum of efficiency and at a minimum cost.

Q. With your knowledge of the origin and destination of the l.c.l. traffic moving to and from the points to be served by the proposed truck service what proportion of this traffic would you say is interstate and what proportion intra-state?

A. I would say that approximately 80% is interstate and 20% intra-state.

Q. Mr. Bowen, have you any basis for estimating the approximate cost of this truck service?

A. I have investigated the cost of operating the truck which our company has operated for a number of years between Hamlet and Monroe and find that it is approximately 15.3¢ per mile. The truck which we propose to use in this operation is slightly smaller than that used in the Hamlet-Monroe service, consequently I estimate that the cost of the Greenwood-Great Falls truck will not exceed 15¢ per mile. [fol. 1339] On this basis the approximate monthly cost of operating this service would be about $800.00. This covers wages, fuel, supplies, insurance, taxes, depreciation and all other costs incident to the operation.

Q. Mr. Bowen, will any savings in operating cost be made through the elimination of train stops at Local stations?

A. Yes, there will be some savings. I estimate a saving of approximately two tons of coal per day, which at the present time amounts to $5.84 per day or approximately $150.00 per month.

Q. Do you propose to curtail train service or reduce the number of employees as the result of this service?

A. No train service will be curtailed or man power reduced.

Q. Will you have to employ additional men for the operation of the truck?

A. Yes, for the operation of the truck, additional men.

Q. So far as it concerns the effect upon employment there will be an increase instead of a decrease?

A. That is correct.

Q. You might explain, Mr. Bowen, why it will be impossible why we do not contemplate the reduction of any train service on this route; or why such a reduction would be impossible and impracticable?

A. Due to the picking up and setting out solid cars for the intermediate local points together with the switching at the various points along the line.

[fol. 1340] Q. Could the truck service as a practicable matter substitute for train service for the handling of carload shipments?

A. No, sir.

Q. That is very obvious. Just one other question, Mr. Bowen. Is there any difference now between the service rendered certain points on the route covered by this application and other points that is rendered by train now. Is there a quality of service between all of the points on this route at the present time?

A. Yes, sir.

Q. Are there certain points which are so-called set off points?

A. Yes, we have three points that have set out merchandise cars.

Q. Are deliveries of l. c. l. merchandise at those points made more expeditionally than at other points along this route?

A. Yes, sir.

Q. Then it wasn't entirely accurate to say the service at all points was equal?

A. That is right. I didn't understand.

Q. You might explain just what the effect of this proposed truck service on that particular situation will be?

A. We propose, of course, to have in these set out cars l.c.l. shipments for the smaller places that would be expedited by the trucks. And it is our desire to put the smaller town on a parity with a larger place, to give him practically the [fol. 1341] same service that everybody gets in this territory.

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: Any further questions? Mr. Abeles, this is your operating witness?

Mr. Abeles: Yes.

The Chairman: Mr. Bowen, you stated in estimating the cost of operation that experience showed that the cost of

operating the Hamlet-Monroe truck amounted to approximately 15.3¢ per mile?

The Witness: Yes, sir.

The Chairman: You mentioned insurance as one of the elements of cost. Do you carry insurance on that truck or are you self insurers?

The Witness: Pardon me, but I just have memorandum of the Superintendent.

(Discussion off record.)

The Witness: We carry insurance on all, so I understand, on all our truck operations.

The Chairman: By independent insurance company?

The Witness: Yes.

The Chairman: Are you familiar with the insurance regulations of the Interstate Commerce Commission?

The Witness: No, sir.

The Chairman: You will be in charge of this operation entirely, I suppose?

[fol. 1342] The Witness: Yes.

The Chairman: You will familiarize yourself with those requirements before you begin operations?

The Witness: Yes, sir.

The Chairman: You can obtain copies of those regulations from the Interstate Commerce Commission. You didn't have in that cost figure an allocation of general overhead expenses in this truck operation such as cost of soliciting freight, supervisory duties of general officers, and things of that sort?

The Witness: No, sir.

The Chairman: That is added cost estimate, is it?

(Discussion off record.)

The Chairman: 15.3¢ per mile does not necessarily reflect all cost of that operation, cost of officers' salaries, etc., are not all allocated to that particular truck operation?

The Witness: No.

The Chairman: So if this were an independent operation and the supervisory officials and the cost of soliciting traffic and preparing tariffs and various overhead costs were allocated they were chargeable entirely to the truck operation then the cost would be somewhat higher, would it not?

The Witness: Yes, sir, I imagine so.

The Chairman: I believe you stated you are in charge of [fol. 1343] this operation or you will be in charge of this operation. Are you familiar with the Motor Carriers Safety regulations of the Interstate Commerce Commission?

The Witness: Not entirely familiar, no, sir. I have read some of it, but I am not entirely familiar. I expect to put myself that way.

The Chairman: You will obtain copies immediately from the officials at Washington and familiarize yourself with the requirements set forth?

The Witness: I will, yes, sir.

The Chairman: I suppose you do know the minimum age for drivers employed?

The Witness: Yes, sir, I have that information.

The Chairman: I want to ask you, Mr. Bowen, in regard to the part of this line between Chester and Great Falls. Are there any towns or points you desire to serve at all between those points?

The Witness: Nothing between Great Falls and Chester, no, sir.

The Chairman: Would there be any objections to a limitation there?

Mr. Abeles: None at all, Mr. Chairman. It is our purpose and desire to serve only points served by rail.

(Discussion off record.)

The Chairman: Now this parallels what is the main line [fol. 1344] of the Seaboard from Greenwood to Chester, does it not?

The Witness: Yes, sir.

The Chairman: And it runs from Chester to Great Falls, not paralleling any line of the railroad and Great Falls is apparently the terminus of a branch line which leaves the main line around Catawba?

The Witness: That is correct.

The Chairman: And terminates at Great Falls?

The Witness: Yes.

The Chairman: Will there be any service to towns which from the map appear to be some little distance from the highway, such as Renno and Leeds?

The Witness: Yes, sir.

The Chairman: The truck will run in there?

The Witness: Yes, sir.

The Chairman: And serve them at your stations?
The Witness: Yes, at the station depot.
The Chairman: I have no further questions. Are there any further questions?
Mr. Abeles: Do you have any further questions?
The Chairman: No, sir.

By Mr. Abeles:

Q. Mr. Bowen, in regard to the questions concerning safety regulations it is our purpose, of course, to comply strictly with all mechanical and other requirements of the [fol. 1345] Interstate Commerce Commission in the operations of these trucks?
A. It will.
Q. You either have or will familiarize yourself thoroughly with those so you are prepared to supervise the operation of these trucks in that respect?
A. Yes, sir.

The Chairman: On your division or the portion of the railroad over which you have supervision as to operation is there any truck operation now being conducted?
The Witness: Well, not that I know of, anywhere that serve in the way this truck will serve.
The Chairman: There is no highway service in your territory that is under your supervision?
The Witness: No, sir, there is not.
The Chairman: Any further questions?

(Witness excused.)
(Discussion off record.)

C. C. McAliley was sworn and testified:

Direct examination.

By Mr. Abeles:

Q. Will you please state your name and residence?
A. C. C. McAliley, Chester, South Carolina.
Q. In what business are you engaged?
[fol. 1346] A. I am engaged in farming, ginning, seed business and merchandise.

Q. Mr. McAliley, you have heard the testimony as to the service which the receivers of the Seaboard are proposing in this case. Will you state your attitude toward this proposal both with regard to your own business and others of which you have personal knowledge in and around Chester.

A. I will just state that as an individual and as a business man and as representing other business interests that anything in this line that would not interfere with the business of other people and that would promote the business of merchandise by giving them much improved service, would be received with open arms by all that are interested.

Q. Is the expediting movement of l. c. l. shipments of importance to merchants in your particular community or territory today?

A. Yes, sir. I would say according to the changed mercantile conditions where merchants now are buying in smaller quantities than was customarily the truth years ago, that 12 hours or 24 hours, would mean quite a help in meeting and competing with other business organizations.

Q. Will you explain a little more fully what you have referred to as the changed conditions?

A. I mean something like a period of before 1929 and 1930 that merchants bought in large quanties, and now they [fol. 1347] buy more in a hand to mouth, and it brought about by a change of prices being caught with high priced goods on hand. Then also on account of contracts of credit by the banks.

Q. In other words they can't carry large inventories today as they used to be able to?

A. Yes, sir.

Q. That means what?

A. It means quick turnovers, smaller purchases.

Q. They are not so apt to have stock, but what is required to meet their orders?

A. Yes, sir. When they want it they want it as quickly as possible.

Q. You stated that you were in the cotton compress business?

A. Cotton ginning and seed buying.

Q. Do you have occasion to buy or order machine parts for your equipment?

A. Yes, sir, occasionally.

Q. For repair work?

A. Yes, sir.

Q. I suppose you want that just as quickly as you can possibly get it?

A. Yes, sir.

Mr. Abeles: That is all.

The Chairman: Any further questions? Do you know about the way truck service is now in operation in and [fol. 1348] around from Chester to points that will be served by this proposed truck service or from those points to Chester at present?

The Witness: Do you mean would this compete with any present?

The Chairman: Yes.

The Witness: Not to my knowledge, sir.

By Mr. Abeles:

Q. Regarding that subject, are there any trucks used in this territory for the delivery of merchandise to retail merchants in this territory, do you know, other than the commercial for hire trucks to which the examiner referred, any other lines, Motor Express lines that run perpendicular to this line proposed that is in northerly and southern directions?

A. Yes.

Q. But do wholesalers from any of these wholesale points deliver to merchants in this territory, so far as you know?

A. Yes. Wholesalers at Chester deliver all around, and the points I would say they deliver wherever their business is and whatever line they may have the goods sold under.

Q. They are using their own private individual trucks?

A. Yes, sir, their own individual trucks.

Q. So far as you know there are no commercial trucking for hire concerns operating?

A. On this line, paralleling this line to my knowledge there are not.

[fol. 1349] The Chairman: Are there further questions?

(No response.)

The Chairman: You may be excused.

(Witness excused.)

Z. H. SUBER was sworn and testified:

Direct examination.

By Mr. Abeles:

Q. Mr. Suber, will you state your name, residence and occupation, please?

A. Z. H. Suber, Whitmire, South Carolina, farmer and real estate.

Q. Were you a member of the legislature at one time, Mr. Suber?

A. Yes, sir. I served six years.

Q. In the house or in the senate?

A. Yes, sir, in the house.

Q. Whitmire, Mr. Suber, town is one on the route proposed for this truck operation is it not?

A. Yes, sir.

Q. Now, will you state as a business man what your view in this proceeding may be?

A. Well, as I see it, not from my own experience, because I'm not running a business at Whitmire. I'm trying to help those who are running a business there.

[fol. 1350] Q. I might interrupt you to ask whether you own business property or property for sale in Whitmire?

A. Yes, sir. I own considerable property according to the size of the town in Whitmire.

Q. Store property, or property used for store purposes?

A. Yes, sir. I own ten store buildings in the town.

Q. Of course, you are dealing with your tenants. Have you familiarized yourself with the conditions under which they operate very closely?

A. Yes, sir.

Q. Now, proceed with your statement, Mr. Suber?

A. Well, knowing the town and the railroad facilities there as I do, because I have been living there ever since the railroad was put through there. Well, as I see it this proposed truck line would be a great saving to the people doing business in the town, because it will save time as Mr. Bowen has stated. I don't know those schedules. Now, it has to lay over in Greenwood a good while before it comes back. It comes from the north and goes to Greenwood and then it has got to come back to Whitmire.

Q. Now, assuming that the service, that the delivery service of l. c. l. shipments to Whitmire and other points on the

proposed route will be advanced some 24 hours. Will you explain for us what advantage that will be to those engaged [fol. 1351] in retail business in your community?

A. Well, it will be one advantage. It will be they buy in small quantities. They can get the stuff in there. It will give them the same advantage of getting stuff in there as quick as the chain stores. Now chain stores run big trucks. They will load up in one town, collect at Spartanburg or wherever their warehouse is and they will come right on through all these little towns, Whitmire not excepted, and they will put off here and there. Well, that is probably the same stuff that the individual merchant has got bought. They get theirs 12 or 24 hours before the individual merchant gets his.

Q. That is the chain store does?

A. Yes, sir.

Q. Is that an important advantage to the chain store?

A. I think so, sir.

Q. In your judgment will that be overcome by the improvement in service which has been testified to here this morning?

A. To some extent, yes, sir. These chain stores own their own truck.

Q. Then, of course, the smaller merchant can't afford to operate his own truck?

A. No, sir.

Mr. Abeles: That is all, Mr. Suber.

The Chairman: Any questions?

[fol. 1352] Mr. Abeles: No, sir, that is all.

(Witness excused.)

(Discussion off record.)

D. C. Robertson was sworn and testified:

Direct examination.

By Mr. Abeles:

Q. Will you please state your name, residence, and occupation?

A. D. C. Robertson, Great Falls, South Carolina, Republic Cotton Mills, in charge of shipping.

Q. You have heard the testimony this morning, have you not, regarding the service which is proposed by the receivers of the Seaboard and improvements which it is expected to accomplish?

A. I have.

Q. Now, will you state from the standpoint of yourself and your community your attitude toward this proposed service?

A. Well, Great Falls as you know is rather isolated anyhow. It is the terminus of the branch line of the Seaboard and we have limited railroad and highway service for that matter. And I feel that it would be a benefit to the merchants by at least where I understand the truck will get in there around 12 o'clock whereas we will get delivery the next morning.

Q. 12 o'clock noon as compared with the following morning?

[fol. 1353] A. Yes.

Q. Which is approximately 24 hours saving?

A. Approximately so, yes.

Q. Now, from your knowledge of business conditions in your community would you say that that was a substantial help or would be a substantial help?

A. I should think it would, yes, sir.

Q. You are quite familiar with the conditions in Great Falls, I presume?

A. Yes, sir.

Mr. Abeles: I think that is all.

The Chairman: Any other questions? You may be excused.

(Witness excused.)

The Chairman: We will take five minutes recess.

(A short recess was taken.)

T. D. Copeland was sworn and testified:

Direct examination.

By Mr. Abeles:

Q. Please state your name, residence and occupation?

A. T. D. Copeland, Clinton, South Carolina, farming and merchant.

Q. Are you in the mercantile business and farming in Clinton?

[fol. 1354] A. Clinton, yes, sir.

Q. Mr. Copeland, you heard Mr. Suber's testimony, did you not?

A. Yes, sir, I did.

Q. Will you state your position regarding Mr. Suber's testimony as to the advantage of it from the standpoint of small inventories of the service which the receivers of the Seaboard are proposing to give in this case. That is Mr. Suber testified that today retail merchants are carrying small inventories and for that reason expedited deliveries of their merchandise is of substantial importance to them. Is that correct from the standpoint of you as an active retail merchant?

A. I think he covered the ground very well indeed. Especially since not being a merchant. I think he did extra well.

Q. What he said is correct as a matter of fact?

A. I think so, yes, sir.

Q. Regarding your competition with chain stores, Mr. Copeland, have you any chain store merchants operating in Clinton?

A. Several.

Q. Do you find that such stores have advantage over you as an independent merchant?

A. We think so, yes, sir.

[fol. 1355] Q. Do you feel that that advantage will be largely overcome if you can get the improved service which has been testified to here this morning?

A. I think it will be a big help, yes, sir.

Mr. Abeles: That is all.

The Chairman: Any further questions?

(No response.)

The Chairman: If not, you may be excused.

(Witness excused.)

W. L. Stanley was sworn and testified.

Direct examination.

By Mr. Abeles:

Q. Mr. Stanley, please state your name, residence and occupation?

A. W. L. Stanley, Atlanta, Georgia, Vice-President of the Seaboard Air Line Railway Company and chief public relations officer for the receivers.

Q. Mr. Stanley, will you explain your association and part in the development of Motor Carrier Service by the receivers of the Seaboard Air Line?

A. I have in connection and cooperation with other officers of the railroad been charged with the duty of studying Seaboard territory to determine what sections of it might be benefited by the auxiliary use of motor vehicles in the handling of l.c.l. freight.

[fol. 1356] Q. Then you are familiar with the kind of policy and plan of policy and purpose of the Seaboard in establishing this type of service?

A. I am.

Q. Will you explain in your own language what that plan, policy and purpose may be?

A. The primary purpose is to expedite the movement of l.c.l. freight delivered to us by the public for transportation. The service that is proposed is largely a coordinated service between rail and motor vehicle. That is to say that in the great majority of instances freight will be handled partly by rail and partly by motor vehicle. As is illustrated in this case developed by the testimony of our Superintendent, Mr. Bowen, freight moving from Atlanta, Georgia, destined to some point between Greenwood and Great Falls would move by rail from Atlanta to Greenwood, then be transferred from the cars to a truck at that point, and moved to destination by highway in motor vehicles. As a result freight to these smaller stations through that operation will be greatly expedited and from 12 to 24 hours in the movement by train saved through this operation. In addition to that some of the other benefits that we see will flow to the railroad and to the public is that our local freight trains will be relieved of the duty of loading and unloading l.c.l. freight at stations. There time will be devoted to the switching of industries and to [fol. 1357] the handling of carload freight to these smaller points. Thus not only expediting the movement of l.c.l. freight but also the movement of carload freight as well. In addition to that there are some instances where we can operate our local freight trains at night. Whether that will be done in this territory, I'm not prepared to say; but where it is possible it will result in the industries be-

ing switched by these local freights during the night time when they are not in operation and when the operation of these industries will not be disturbed by that switching: I simply mentioned that as few of the illustrations that indicate the degree in which our service to the public will be improved by this coordinated rail and truck service.

Q. Is there any purpose, Mr. Stanley, of the establishing of an independent highway trucking service. I say independent in the sense of independence of our rail transportation?

A. Absolutely no. There is no form of transportation of which I have knowledge that is as cheap as that by rail provided the volume of business to be handled is sufficient. I cannot conceive of any circumstances or conditions that would permit of the institution of highway service for rail service, and therefore our purpose——

Q. You mean entirely?

A. Entirely. And our purpose is to simply use it as supplemental to the rail service and as auxiliary to that service.

[fol. 1358] Q. I see. Have the receivers of the Seaboard Air Line been authorized to perform this service, Mr. Stanley?

A. Yes, by the United States Federal Court for the Eastern District of Virginia.

Mr. Abeles: Mr. Chairman, I should like to offer as an exhibit the order of the District Court of the United States of Virginia, entered July 15, 1937, authorizing the receivers to undertake and perform motor carrier service of the type here contemplated. The order speaks for itself. These copies are certified.

The Chairman: It will be received in evidence as Exhibit No. 2, without objections.

(Exhibit No. 2, Witness Stanley, is received in evidence.)

The Witness: May I be permitted to make one comment about the traffic in this territory?

The Chairman: Yes, sir, surely.

The Witness: I think an examination of this map that has been filed as exhibit No. 1, together with my knowledge of the territory in between Greenwood and Great Falls, would indicate that the business moving into that territory comes largely from the south, from Atlanta and Birming-

ham, and the west on the south. And from Richmond, Philadelphia, New York and Charlotte on the north and east; and that it is largely interstate. Now, Mr. Bowen [fol. 1359] has testified that we have what we call break bulk points. That is points where cars are unloaded and the business distributed from them.

Q. I think that is what he referred to as set off points?

A. Yes, at Greenwood, at Clinton, and one or two other points. Now this freight that I have just referred to interstate that comes from Atlanta and Birmingham in the west on the south, and from Philadelphia, Richmond, and Norfolk on the east. It all comes to one of those break bulk or set off points and it would be handled for the greater part of the distance by rail, and from comparatively short parts of the country by this truck. We have not in this territory nor could we afford to have sufficient number of local freights to accomplish the same expedited service that we can get from this coordinated rail and truck service which has been testified to here.

Q. In other words, as Mr. Bowen states, what we are proposing in this proceeding can only be accomplished efficiently and economically in the way we are proposing to provide it?

A. Correct.

Q. Mr. Stanley, what have you to say with regard to the experience of the Seaboard in operating motor carrier service of this type in the past?

A. I didn't catch the first part.

(The question is read.)

A. We have had considerable experience in the operation of these truck lines. The first service that we estab- [fol. 1360] lished was five or six years ago between Hamlet-Monroe, North Carolina. Then it was followed beginning about the year 1933 or 1934 with the establishment of several truck operations from time to time in the state of Florida. We also have one in the state of Georgia that has been in operation for about two and a half years that being between Rhine and Lyons, Georgia. So, we have some eight or ten of these operations extending that have been in existence from one to five or six years and none of them has ever been discontinued.

Q. What is the approximate total mileage now operated by the receivers of the Seaboard?

A. About 450 miles.

Q. You stated that none of them had ever been discontinued. Have they satisfactorily fulfilled the purpose for which they were established?

A. Yes, and which purpose was that that I testified to a little while ago.

Q. They are all of the same type as that which is here proposed?

A. Yes. I might add this in order to make the record perfectly clear. It never has been the intention of the receivers of the Seaboard to get away from the territory of our rail lines. We try to confine these operations as near as it is possible to do so to highway paralleling our rail lines and we have never sought nor do we now serve [fol. 1361] any community which is not served by our rail lines.

Q. So there is involved in this service no element of the invasion of territory which has not already been developed and served for sometime by the rails of the Seaboard.

A. We serve the territory which has been developed by our rail lines and which is served today by our railroads.

Q. Mr. Stanley, the motor carrier act of 1935 required the commission to find among other things that the applicant is fit, willing and able to perform the service proposed. What have you to say regarding the financial ability of the receivers of the Seaboard to conduct the services here under consideration?

A. That it is able to financially undertake and maintain this service, I think, is demonstrated by the fact that for the year 1936, the railway operating revenues of the Seaboard were $38,346,055.37. The net railway operating income that is that sum remaining after the payment of operating expenses taxes, and joint facilities and equipment and rents was $2,920,582. The gross income was $3,276,751.23.

Q. From what were you reading those figures?

A. Reading from the annual report of the Seaboard Air Line Railway for the year ending December 31, 1936.

Q. On what page is that?

A. On page three.

Mr. Abeles: We offer in evidence the annual report just [fol. 1362] referred to by the witness.

The Chairman: This will be received as Exhibit No. 3 without objections.

(Exhibit No. 3, Witness Stanley, is received in evidence.)

By Mr. Abeles:

Q. Mr. Stanley, Mr. Bowen testified that based upon the experience in the operation of the existing truck service by the applicant here, between Hamlet and Monroe, North Carolina, he estimated that the approximate monthly cost of operating the service here under consideration would be about $800. The Examiner then asked him whether or not that figure included any items of overhead cost such as supervision of traffic and others. What have you to say in regard to that?

A. The figures to which Mr. Bowen testified represented actual out of pocket cost of operation of this truck line. Of course, it does not include any over head cost that might be applicable to the solicitation of business or the supervision of the operation of this truck. However, I will say this, that that cost would exist regardless of whether the truck is run or not. The same people that solicit business for the railroad would solicit the business that moved partly by rail and partly by truck.

Q. Mr. Stanley, who is superintendent of the operations of the Georgia Division?

[fol. 1363] A. The overseer on the Georgia Division would get the same salary whether the truck is operated or not, and so as to every other officer of the railroad. Technically some of that expense, theoretically speaking I should say some of that expense would be apportionable to the truck operation, but it would be there whether or not the truck was operated.

Q. Then to the extent that any of such general overhead expense items were charged to the truck operations they would have to be a potential reduction of such expenses attributable to the rail service?

A. Yes.

Q. Now regarding the financial results of the operation of the proposed service, Mr. Stanley, is it possible to show

the extent to which such service would be profitable in its independence of our rail operations?

A. You can only theorize as to that. Comparing the year 1936 with that of 1929, the carload business of the Seaboard Air Line Railway decreased 19.2% in the year. And the less than carload business decreased 32.6%. The difference in those two figures in my mind is represented largely by the business which went to the highways, which was transported by common carrier and contract carrier trucks, trucks owned by whole sale merchants and others of a similar class. Now if our decrease in l.c.l. business during the period named had been no greater than it was [fol. 1364] in carload business, the Seaboard would have earned gross approximately $1,200,000 more than it did earn. So to the extent that by this improved service we are able to bring more business back to the railroad. We are financially benefitted by it.

Q. Would the additional traffic that would be attracted to the rails and to this coordinated rail highway service come necessarily or entirely or enlargely from the existing commercial motor carriers?

A. Did you say entirely?

Q. I say would it necessarily come entirely or enlargely from existing motor carriers?

A. As I understand it in this particular territory there are no competing certified carriers. Therefore in answer to the question in respect to this territory, I should say no. Speaking generally I should say that the largest part of our business would come from the privately owned truck lines rather than from the common or contract carrier lines. Although I believe some would be taken from those lines if our service was superior?

Q. Yes, but if it were taken from such commercial lines it would only be by virtue of superior service.

A. Yes, then I'll call attention to the fact that at one time we enjoyed all of this business and it was taken away from us.

Q. So it would be merely a process?

[fol. 1365] A. Notwithstanding the fact that we spent millions of dollars to develop the territory which is served by our rail line.

Q. That will be a process of recouping rather than diggressing traffic from an agency which had originated it?

A. Yes.

Q. Now, in this territory in particular, Mr. Stanley, you heard the testimony of residents of this local territory regarding the use of privately owned trucks by wholesale merchants for the distribution of their merchandise retail dealers. Is that the character of traffic which you have in mind which it might be possible to reattract to rail service?

A. Largely so, yes, sir. But here I think you are dealing with an application that involves the handling of interstate business and except as to trade centers which are near this trade territory, such as Raleigh, North Carolina. I do not believe either common carrier, truck or privately owned truck would be in competition for that business not for these great distances.

Q. You mean those operations would be confined to shorter distances?

A. Yes. I do call attention to this fact. I think it is one to be very much desired in the public interest. To the extent that you can concentrate transportation of freight [fols. 1366-1367] into a few agencies and a few vehicles that it is very much to be desired because it will have a tendency to unclutter the roads from the use of innumerable motor vehicles.

Q. And would there be any tendency in your opinion to stifle unduly and needed competition in transportation service?

A. No. In other words if the public interest requires competitive service the fact that we are using this as auxiliary to our rail service would be no justification for refusing it.

Q. Is there anything further you wish to say, Mr. Stanley, in this regard?

(Discussion off record.)

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: Any further questions. If not, you may be excused.

(Witness excused.)

Mr. Abeles: That closes the applicant's case, Mr. Chairman.

The Chairman: Do you wish to file briefs?

Mr. Abeles: No. Briefs will not be filed, pending the issuance of the recommended report.

The Chairman: The hearing is adjourned.

(Whereupon at 11:30 a. m. the hearing adjourned.)

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[fols. 1368-1369] BEFORE THE INTERSTATE COMMERCE COMMISSION

MC 86687, Sub. 15

In the matter of the application of LEGH R. POWELL, JR., and Henry W. Anderson, Receivers of Seaboard Air Line Railway Co., of Seaboard Air Line Building, Norfolk, Virginia, for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of North Carolina, between Monroe and Waxhaw, North Carolina.

U. S. Court Rooms, Charlotte, N. C., March 14, 1938.

Met pursuant to notice at 10 o'clock a. m.

Before: Joint Board No. 103, composed of Hon. R. O. Self, N. C. Utilities Commission, Raleigh, N. C., Chairman.
Also Present: Hon. W. W. McCaslin, Bureau of Motor Carriers, Charlotte, N. C., Examiner.
APPEARANCES: CHAS T. ABELES, S. A. L. Ry. Co., Norfolk, Va., appearing for the applicants.

[fol. 1370] Proceedings

The Chairman: We will come to order, gentlemen. The Interstate Commerce Commission has set for hearing at this time and place before Joint Board No. 103, the application of Legh R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway Co., of Seaboard Air Line Building, Norfolk, Virginia, for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of North Carolina, between Monroe and Waxhaw, North Carolina.

I should announce at this time that no free copies of the transcript of testimony will be distributed. Persons desiring same must order from the reporter. No smoking will be permitted during this hearing. Persons who appear as counsel and not as members of a partnership or officials or employees of a corporation, or in their own behalf, individually, must be admitted to practice or have applied for admission to practice before the Interstate Commerce Commission, unless they have not previously heard of such requirement. Therefore, at the time appearances are entered, announcement should be made of the capacity in which the appearance is made or as to whether or not a person so appearing is admitted to practice before the commission.

Who appears for the applicant?

Mr. Abeles: Charles T. Abeles, counsel for the applicant. [fol. 1371] My address is Norfolk, Va., and I am qualified to practise before the Commission.

The Chairman: Are there any protestants in this case?

(No response.)

The Chairman: We will proceed.

Mr. Abeles: I will ask Mr. Bowen to take the stand.

J. H. Bowen was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Please state your name, residence and occupation, Mr. Bowen.

A. J. H. Bowen, Atlanta, Georgia, Superintendent, Georgia Division.

Q. Is the line between Monroe, N. C. and Waxhaw, N. C. under your supervision?

A. Yes.

Q. How long have you been in charge of this operation as Superintendent?

A. Since August 25, 1936.

Q. Then you are thoroughly familiar with the operating conditions on this line?

A. Yes.

Q. Will you describe the proposal which is under consideration in this proceeding?

A. We are now operating truck service between Hamlet [fol. 1372] and Monroe, N. C., and the purpose of this application is simply to extend this truck service to Waxhaw, which is approximately 12½ miles south of Monroe. Only less-than-carload shipments will be handled by the truck to and from stations served by our rails.

Q. That service, of course, will be operated in both directions?

A. Yes.

Q. What will be the schedule of the proposed truck service?

A. It will leave Monroe at 8:00 A. M., arrive at Waxhaw at 8:40 A. M., depart from Waxhaw at 9:20 A. M., and arrive at Monroe at 10:00 A. M.

Q. That will be a daily except Sunday service?

A. Yes.

Q. How many stations are there on this route?

A. Three, namely Houston, Mineral Springs and Waxhaw.

Q. Will you now describe the present schedules of train-handling traffic consigned to these points?

A. The volume of this traffic does not justify a daily local train service and we therefore operate a tri-weekly local service. Southbound Local No. 61 leaves Monroe at 7:50 A. M. on Tuesdays, Thursdays, and Saturdays, and arrives at Waxhaw around 8:40 A. M. Northbound Local No. 62 departs from Greenwood, which is about 100 miles south of Waxhaw, at 8: A. M. Mondays, Wednesdays and Fri- [fol. 1373] days, and arrives at Waxhaw around 4:00 P. M., and Monroe about 5:00 P. M. In addition we operate through trains on this route which, while they do not directly serve the stations to be reached by the proposed truck service, handle the shipments which are consigned to these stations in the manner in which I shall later describe. These through trains are Southbound Train No. 83 which leaves Monroe daily at 9:30 P. M.; Northbound Train No. 88 leaving Atlanta at 7:00 A. M. and scheduled to arrive at Greenwood about 5:30 P. M., and Monroe around 11:30 P. M. and through Northbound Train No. 82 which leaves Atlanta at 5:00 P. M. and is scheduled to arrive at Monroe at 7:30 A. M. the following morning.

Q. Please describe the origins of interstate traffic moving into the stations which will be reached by the extended truck operation and the manner in which this traffic is now handled by train.

A. The less-than-carload merchandise consigned to the stations involved moves principally from interstate origins beyond Charlotte, N. C., Hamlet, N. C., and Atlanta, Georgia, in package cars loaded to and which break bulk at those points. I shall deal with each of these origin territories separately.

Less-than-carload merchandise moving through Charlotte includes freight received from connections at that point, namely the Piedmont & Northern Railway, the Nor- [fol. 1374] folk Southern Railway and the Southern Railway. In addition there is consolidated at this point all less-than-carload merchandise moving via the Clinchfield Railroad through Bostic, N. C., from such a middle western origin points as Louisville, Cincinnati, Chicago, Detroit, etc.

Q. How is the merchandise from these origins now handled?

A. Merchandise cars are loaded at Charlotte on Mondays, Wednesdays and Fridays containing less-than-carload shipments consigned to all points intermediate between Monroe and Greenwood, including Houston, Mineral Springs and Waxhaw. These cars are forwarded to Monroe and are carried on Train No. 61 leaving Monroe on Tuesdays, Thursdays and Saturdays. If interstate freight consigned to Waxhaw reaches Charlotte on Saturdays it is not delivered until the following Tuesday, or third morning delivery.

Q. When you state Waxhaw, I presume you take Waxhaw as representative of all the through stations on this route?

A. That is right.

Q. Proceed.

A. Traffic handled in package cars which reach Charlotte on Tuesdays and Thursdays lay over at Charlotte until the following night when it is forwarded to Monroe for delivery on No. 61 the following day, or second morning delivery. Only freight available for forwarding from Charlotte on Mondays, Wednesdays and Fridays receives [fol. 1375] overnight service to the destination involved.

Q. Now explain how this merchandise will move if the proposed truck service is established?

A. With the proposed truck service in operation traffic from Charlotte and beyond will be moved on a daily night train from Charlotte to Monroe at 1:35 A. M. and will be forwarded by truck that morning leaving Monroe at 8:00 A. M. and arriving at Waxhaw, and intermediate points, at or prior to 8:40 A. M. In other words traffic available for loading at Charlotte on Saturdays will be delivered on Monday Morning instead of Tuesday morning as at present, or a saving of 24 hours, and merchandise available for loading at Charlotte on Tuesdays and Thursdays will be delivered the following morning instead of the second morning, a saving of 24 hours. In addition there will be daily service from Charlotte to this territory instead of tri-weekly.

Q. Now describe, Mr. Bowen, the present method of handling traffic moving through Hamlet.

A. This traffic originates in eastern territory such as New York, Philadelphia, Baltimore and Pittsburgh, as well as Richmond and Norfolk and all southern points except Birmingham, Atlanta and beyond. At the present time freight moving through Hamlet is now loaded on package cars which are forwarded by through Train No. 87-83 [fol. 1376] to Chester, S. C., arriving there about midnight, where they break bulk. When these shipments reach Chester on Mondays, Wednesdays and Fridays they are forwarded on Northbound Local No. 62 that day and reach Waxhaw about 4:00 P. M. that afternoon. When the shipment reaches Chester on Tuesdays, Thursdays and Saturdays, on which days Local freight No. 62 is not operated, it lays over in Chester for 24 hours. With the truck service in operation the package car handling these shipments will be loaded on Monroe daily, arriving at that point at 9:00 P.M., and will be forwarded by the truck the following morning, arriving at Waxhaw about 8:40 A. M. This means that shipments heretofore moving from Chester via Local Train No. 62 on Mondays, Wednesdays and Friday- will be delivered at 8:40 A. M. instead of 4:00 P. M., practically a day's saving, whereas the shipments which, reaching Chester on Tuesdays, Thursdays and Saturdays were compelled to lay over at that point for 24 hours, will be advanced practically 48 hours.

Q. Mr. Bowen, now discuss the traffic originating at Atlanta, Birmingham, and beyond.

A. At present, traffic moving from or through these points is loaded at Atlanta and forwarded on through Train No. 88 leaving Atlanta at 7:00 A. M. for Greenwood where it arrives about 5:30 P. M. At that point, where a night transfer force is maintained, the cars break bulk. When these shipments are delivered at Greenwood on Tuesdays [fol. 1377] and Thursdays they are forwarded by Local Train No. 62 the following morning and reach Waxhaw at 4:00 P. M. Shipments arriving at Greenwood on Saturday are forwarded the following Monday morning and arrive at Waxhaw at 4:00 P. M. that afternoon. Shipments arriving at Greenwood on Mondays, Wednesdays and Fridays too late for Train No. 62 are loaded on a turn-back car for Monroe and carried on through Train No. 82 to Monroe, arriving the following morning. The car is then forwarded on Local Southbound Train No. 61, leaving Monroe at 7:50 A. M., and arriving at Waxhaw at 8:40 A. M. the same morning. By utilizing the proposed truck service all of these shipments originating at or beyond Atlanta will be loaded at Atlanta and moved on through Train No. 82 to Monroe, arriving at 7:30 A. M. in time for transfer to and delivery by the truck at Waxhaw at 8:40 A. M. that morning. Thus a shipment loaded at Atlanta on Monday, which now does not arrive at Waxhaw until Wednesday at 4:00 P. M. will be delivered by truck at 8:40 A. M. Tuesday morning; and shipment loaded at Atlanta on Tuesday, which now arrives at Waxhaw at 8:40 A. M. Thursday, would be delivered by the truck at 8:40 A. M. Wednesday.

Q. Mr. Bowen, is there any traffic originating at the points to be served by the proposed truck route service on which will be improved?

A. There is at present no outbound traffic of any consequence moving from this territory.

Q. Mr. Bowen, will the proposed truck operation be of [fol. 1378] benefit in the service on the traffic other than that consigned to points on the proposed truck route?

A. The proposed truck service will save us at least 30 minutes additional time a day through the elimination of unloading the merchandise for the points named on Train 61, which would enable us to get Train 61 to Greenwood in sufficient time to work the other merchandise cars going

to Greenwood for other points. Train 61 moves considerable less-than-carload traffic consigned to distant destinations throughout the country beyond Greenwood, at which point these shipments are concentrated into through package cars. This requires the transfer of these shipments from Train 61 to the through package cars for forwarding on Trains 82 and 83 the same night, a night transfer being operated at Greenwood for this purpose. At times we have difficulty in reaching Greenwood with Train 61 in time to complete this transfer work. Consequently any time that can be saved in the arrival of Train 61 will assure the forwarding of these merchandise shipments on schedule. For the same reason the earlier arrival of Train 61 at Greenwood will assure the forwarding of solid carloads moved by Train 61 on Train 85 which leaves Greenwood at 9:45 P. M. At times these connections are now missed.

Q. Mr. Bowen, you have explained the improvements which will be made possible through the establishment of [fol. 1379] the proposed truck service. Is there any way by which these improvements could be accomplished by improving train service except at a prohibitive cost?

A. No.

Q. Mr. Bowen, will any savings be effected by the proposed operation?

A. Yes. While we do not propose to curtail our present train service, there will be a savings of approximately $5.00 per day which will be effected through the reduction in fuel consumption made possible by the elimination of local stops and in overtime.

Q. Mr. Bowen, are you familiar, or will you familiarize yourself, with the Commission's rules and regulations governing the operation of motor carrier trucks in interstate commerce?

A. I have examined the regulations which have come to me and am familiar with them and will, of course, keep myself currently informed of any revisions or additional regulations that may be issued.

Q. Mr. Bowen, will your trucks be equipped with all the safety appliances required by the Interstate Commerce Commission, or by the State authorities?

A. Yes, sir.

Q. Do you know of any established motor carriers serving stations which will be reached by the proposed extension truck service?

[fol. 1380] A. I do not.

Mr. Abeles: That is all. Are there any questions?

The Examiner: Do you have any motor carrier employees now under your supervision?

The Witness: Yes, sir.

The Examiner: When you do have such employees do you see that they are fully instructed in regard to all safety regulations and that all your vehicles are kept equipped in accordance with the safety regulations?

The Witness: Yes.

By Mr. Abeles:

Q. How many stops a day will be affected by this operation?

A. Possibly three.

The Examiner: About a half hour overtime eliminated?

The Witness: Yes, a half hour overtime, each crew, 61 and 62.

(Witness excused.)

R. W. Rogers was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. State your name, residence and your occupation.

A. R. W. Rogers, residence, Hamlet, N. C., superintendent of the North Carolina Division of the Seaboard Air Line Railway.

Q. Have you been operating trucks in motor carrier serv-

[fol. 1381] ice on any part of your division?

A. Yes.

Q. Between what points?

A. Between Hamlet, North Carolina, and Monroe, North Carolina.

Q. And for how long?

A. Since July, 1932. Personally, I have had supervision over this service since September, 1934.

Q. Do you know whether accounting records have been maintained of the cost of operating that truck service?

A. They have.

Q. Let me see it.

(Discussion off the record.)

Q. You have statements showing that cost?

A. I have.

Q. Will you state for the record, Mr. Rogers, what periods are covered by the statements which you have before you and what they show?

A. I have one statement covering a period of 56 months of operating the Hamlet-Monroe truck from July, 1932, to February, 1937. That covered the actual life of a truck from the time we put it into service until it was finally discarded.

Q. When you say discarded, what do you mean?

A. I mean traded in.

Q. Sold?

A. Yes.

[fol. 1382] Q. Now will you state the items into which that statement is broken down and the amounts referable to each?

A. The first items pertain to the mileage, the gasoline consumption and the oil consumption.

Q. You might state what each item is and the amount.

A. That truck in the 56 months of its service made 148,872 miles. We consumed 31,913 gallons of gas, 367 gallons of lubricating oil.

Q. At a total cost of what?

A. As to the cost, gasoline was $4,723.86. Lubricants, $273.10. Tires, $1,000.66. Do you want the details of each of these or the totals?

Q. The totals.

A. In this also is included repairs, licenses——

Q. I beg your pardon, I don't want each item.

A. Repairs, $2,403.71. Other supplies, $159.67. Driver, $5,148.61. Licenses, $2,332.35. Insurance, $955.36, Taxes $308.00, a total of $17,305.32. The cost of the tractor and semi-trailer was $4,300. Interest on the investment at six per cent for four and two-thirds years was $1204.00,

making a total investment cost of $5,504.00, less a trade in value or allowance at the time it was disposed of $250.00, making a gross of $5254. Net investment cost of $5254.00, which added to your operating cost made our entire cost [fol. 1383] of $22,559.32. This averaged then $402.84 per month. The cost per mile was .152 cents per mile, and gas consumption was 4.66 miles per gallon.

Q. Now, Mr. Rogers, when was that truck sold or disposed of?

A. Sometime in March, 1937, February or March 1937.

Q. Have you a record of the cost of operating the new truck over the Hamlet-Monroe route?

A. Yes. I have a statement covering the period of May 7, 1937, to January 31, 1938.

Q. Generally speaking, that statement is composed of the same items you have recited, with the exception, of course, of the depreciation, is that correct?

A. In this truck, not having the actual figures as we did in the other, we have estimated the depreciation.

Q. At what rate?

A. 15 per cent per annum.

Q. And based upon that estimated depreciation rate, what is the cost per mile developed for the several months of operation of the new truck?

A. .1233. That is 12 and ⅓ cents per mile.

Q. That presumably is somewhat low, is it not?

A. Yes, because the truck, of course, was new. We have spent very little for repairs. Of course, your new truck gasoline and oil consumption is low.

Q. Do you feel, Mr. Rogers, that the cost of 15.2 cents [fol. 1384] *cents* developed throughout the life of the old truck is a reasonably accurate figure for the cost of operating the present truck?

A. Very close, yes.

Q. Now, Mr. Rogers, with regard to the additional cost of operating the 12.5 miles, between Monroe and Waxhaw, would that cost per mile fairly represent the additional cost of operating for that distance?

A. Well, the cost per mile for the additional mileage should be less because in this is your licenses, your taxes, and your depreciation and those items that will not be increased by increasing the mileage. Of course our driver is paid on a monthly rate up to reasonable hours, and this

added mileage does not add to his wages on account of it being so very small.

Q. I understand from what you have just said that the overhead items which you have named and which comprise a very substantial part of the cost per mile will not be increased by the additional mileage operated.

A. No, generally speaking the only increased items will be in gasoline, oil and some wear and tear on our tires.

Q. In any event the fifteen and a fraction cents per mile developed for the cost of operating your own truck would be an outside figure for the new operation?

A. Oh, yes, ample.

[fol. 1385] Q. Now, Mr. Rogers, with regard to the Monroe-Waxhaw part of this operation, will you have charge of the equipment, appliances and crew in charge of this truck?

A. Generally, yes.

Q. Now, will you state whether you are thoroughly familiar with the Commission's rules and regulations applicable to the operations of trucks of this character?

A. I am.

Q. Will you see to it that these trucks are equipped with all of the appliances required by the Commission's regulations?

A. We will see to it that the truck complies in every way with the regulations of the Commission.

Q. And that the drivers' rules are observed?

A. We will, and we do.

The Chairman: Do you pay the employees to operate a truck the same rate of wages you pay similar classes of folks on the rails?

The Witness: No, the rate of pay of a truck driver is different from rates of pay on train service.

The Chairman: In other words, the chauffeur on the truck does not get engineers' pay?

The Witness: No, sir, he does not.

The Examiner: Will the equipment which is used on this proposed new operation be of the same character and class [fol. 1386] as to size, weight and capacity as the one shown to have been operated between May, 1937, and January, 1938?

The Witness: It will be the same truck.

The Examiner: That will be a stretch out of its present run between Hamlet and Monroe?

The Witness: That is right. It adds approximately 25 miles a day more to the run.

The Examiner: Now, necessarily, I suppose, in this statement of cost which comes to 15.2 and the other statement which shows 12.33 cents per mile, there has been no allocation of the general supervisory salaries and the cost of solicitation and publication of tariffs and those general railroad overhead expenses?

The Witness: Not at all. This is purely an arrival of the out of pocket cost.

The Examiner: Then the 15.2, if it were an independent operation, would not cover the entire cost, would it? I mean if this were a truck operated alone.

The Witness. Possibly not.

The Examiner: Alone where solicitation was necessary and general supervision and the publication of tariffs and the like had to be borne entirely by the truck service, this figure would be low, would it?

The Witness: I should think so, yes.

The Chairman: Mr. Rogers, do you figure that the truck [fol. 1387] you have operated there has been operated at a profit?

The Witness: Yes, sir.

The Chairman: Do you figure that profit to the railroad from the standpoint of revenue made by the truck itself, or from saving from operating trains on the same territory?

The Witness: Both. We control business with the present truck that we would not control without it. And it does give us for the local service that it performs, an economical operation.

The Chairman: That is all.

By Mr. Abeles:

Q. Mr. Rogers, in connection with the question as to whether or not the cost statement which you have given for the record includes any supervisory or overhead costs, will there by any addition to such costs because of the additional operation here?

A. None whatever.

Q. Has there been in connection with the operation of your Hamlet-Monroe truck service any additional overhead cost?

A. None whatsoever, and if you pro-rate the overhead of the North Carolina Division on a mileage basis as between truck and train service, the allocation to this particular truck service will be very low.

Q. To the extent, however, that supervisory and overhead cost of an independent service will be substantial, we can operate trucks, can we not, more cheaply than an in-
[fol. 1388] dependent company?

A. Yes, because we do not require the additional overhead expenses itself and supervision.

(Witness excused.)

W. L. STANLEY was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. State your name, residence and occupation, please.

A. W. L. Stanley, residence, Atlanta, Georgia, vice-president of the Seaboard Air Line Railway Company and Chief Public Relations Officer for the receivers of that company.

Q. You have occupied that position for sometime, have you not, Mr. Stanley?

A. Yes, sir, for a number of years.

Q. Have you been closely associated with the development of motor carrier service by the Seaboard Air Line Railway and its receivers?

A. I have.

Q. Are you thoroughly familiar with the plan and purpose which the receivers have in mind in establishing such service?

A. I am.

Q. Will you now explain for the record just what that plan and purpose is, Mr. Stanley?

A. The general plan is to develop a coordinated rail and
[fol. 1389] truck service. That is to say, to handle wherever the business may be expedited or where it may be more economical to do so, to handle it partly by rail and partly by truck. We do not propose to operate the trucks independently of the railroad, but as a part of the railroad. All of the freight that is received by us will move under railroad bills of lading. It will move from our depots to

our depots, and only between those points. I might illustrate what I have in mind by saying this, that as the Witness, Mr. Bowen, explained, freight comes to us at concentration points from all over the United States, and there cars are made for distribution to the various lines of the railroads. It is our purpose to take that freight and move it to some convenient central point and then in the delivery of it to the smaller stations to utilize trucks. Of course, we will handle any freight from contiguous stations that may be offered to us, smaller stations, by truck. In that way, first, the freight will be greatly expedited. We will give a better service to the public. In the second place, it will enable us not only to expedite this less than carload freight, but to also expedite the handling of carload freight for the smaller stations, which is now handled and placed largely by our local trains, for the reason, to the extent that these local trains are relieved of doing peddler work [fol. 1390] at smaller stations, they will have more time to devote to the movement of carload business and the time that will be required in doing that, in handling carload business to these smaller places, will be lessened. In addition to that, we also feel that in many instances we can operate local freight trains during the night time and switch industries at smaller places that have no yard crews at times when the manufacturing plants will be less inconvenienced by that switching.

Q. Mr. Stanley, reference has been made by Mr. Rogers to the Seaboard's previous operation of the truck service between Hamlet and Monroe. What other experience has the Seaboard had in operating motor carrier service?

A. As I recall it, the first service that we established was that referred to by Mr. Rogers between Hamlet, North Carolina and Monroe, North Carolina, which was put on about July, 1932, about the middle of the year, 1932, and which has been operated continually since that time. About that date we also established a service between Monticello, Florida and Drifton, Florida, handling both passengers and freight. Then we put on a service handling freight and express between Waldo, Florida and Morriston, Florida. Then another service from Tampa to Jacksonville. From Jacksonville to Wildwood, Florida, subsequently extended that from Wildwood to Tampa. Then another serv- [fol. 1391] ice between Rhyne, Georgia, and Lyons, Georgia, a distance of about 58 miles. I don't know that I have

stated them in exact logical order, but beginning with the summer of 1932, most of these services were established about that time and have been continued since that date. I am speaking of those services that are handling both intrastate and interstate business.

Q. Now, have we any services which are handling intrastate business only?

A. Yes. We have this service that we are seeking application for, the service here now engaged in intrastate business under the authority of the North Carolina Utilities Commission. Then we have a service between Jacksonville, Florida and River Junction, Florida, engaged solely in the handling of intrastate business that covers a distance of about 208 miles, an application of authority to handle interstate business now pending with the Interstate Commerce Commission.

Q. Can you tell us approximately what the mileage of these several routes aggregates?

A. Including those that are handling intrastate business only, I should say between 700 and 800 miles. I am approximating it.

Q. Have these operations functioned successfully in the manner and for the purpose for which they were intended?

A. Very, and have fulfilled our expectations as to what could be accomplished by the establishment of them.

[fol. 1392] Q. Have any of them ever been discontinued to your knowledge?

A. No, in all of our experience we have never discontinued but one service that I recall. That was one that was put on temporarily between Norlina, N. C. and Hamlet, N. C., primarily for the purpose of handling U. S. mail. And due to the fact of taking off or rearrangement of schedules of certain passenger trains.

Q. You may have already covered this in your testimony, but if not, will you state whether these trucks are utilized as a substitute for train service?

A. No, they are simply used as an adjunct to train service. As a matter of fact, I do not recall a single train, with the exception of the Monticello and Drifton branch, four miles between those points, that has been discontinued. I might add that between Waldo and Morriston, Florida, that since that truck service was established, we have put on one or more freight trains in that territory.

Q. Do you think that the truck service we had established on that route was in part responsible for the additional train which was put on there?

A. It gave to the public a better service. It had something to do with it. I wouldn't say it was the controlling reason, but wherever we have established these truck lines we have expedited the movement of freight and given to [fol. 1393] the public a service which it appreciates and of course as a necessary result of that, it has attracted business to the railroads.

Q. In any event, I understood you to say that we had never taken off trains because of the establishment of truck services of this nature.

A. No, that was not in contemplation as one of the reasons for establishing the service. I don't know whether it is strictly proper testimony, but I might, from an investigation which I made in order to determine just how the public felt about some of these services, give you the result of the queries that I made into the service which we have between Lyons and Rhyne, Georgia.

Q. I think that would be very interesting.

A. We used to have a tri-weekly local in that territory, and as is the case between Monroe and Waxhaw, freight arrived three times a week from one direction, three times a week in another direction, at any hour during the 24 that the train was scheduled to arrive. Now we are loading from Savannah, Georgia, and from Macon, Georgia, cars that break on Vidalia, Georgia, and the truck then takes the freight that has moved for those distances by rail, which in one instance is 80 miles and the other 91 miles, and distributes it to these smaller stations. Not only one merchant, in that territory, but many merchants [fol. 1394] in response to the inquiry as to how they liked this service, made this statement, that they could not depend upon the old rail service, but that now if a patron would come into their stores as late as four o'clock in the afternoon and want to purchase some article, and it wasn't in stock, that they could call up the wholesaler in Macon, Georgia and ask him to ship it out that evening by the M. D & S, which is a Seaboard subsidiary, and assure him that the next morning the freight would be delivered at eleven o'clock at destination and never miss their guess.

Q. Now, Mr. Stanley, will you discuss the importance of the less carload traffic to the Seaboard and something of the history of that traffic in the past few years.

A. Of course, the freight traffic of the railroads as a whole has materially decreased since 1929. The major reason for that decrease is the depression, but there has been a very much greater decrease in the volume of LCL freight of the Seaboard than there has been in the volume of carload business. Now in the year 1929, the Seaboard Air Line system handled 15,794,980 tons of carload freight, and in 1926 it handled 12,758,567 tons of such freight. In the year 1929 we handled 784,186 tons of less than carload freight, and in the year 1936, 496,990 tons of less carload freight; making the comparison for those two periods, the carload business decreased 19.2 per cent, while the less [fol. 1395] than carload business decreased 38.6 per cent. Now if the decrease in the less than carload business had been no greater than that that pertained to the carload business, we would have handled 138,631 more tons of less than carload freight in 1936 than we actually did. And would have earned $1,199,620 more than we actually earned.

Q. Now, Mr. Stanley, do you think the establishment of motor carrier services such as is proposed in this proceeding will be effectual in part at least in arresting that decline in the movement of less carload traffic?

A. I do.

Q. I understand that the primary purpose of this service is to handle and expedite less carload shipments, is that correct?

A. The primary purpose of this service is to give to the public a better service than we can afford today; solely through the use of trains and to the extent that we render that better service we believe that our business will be increased.

Q. Mr. Stanley, I am handing you a copy of the anual report of the Seaboard Air Line Railway and its receivers for the calendar year 1936, which is the last available annal report and I am going to ask you to refer to that and state for the record the railway operating revenues, the net railway operating income and gross income as shown [fol. 1396] on that report.

A. For the year 1936, the railway operating revenues of the Seaboard Air Line Railway were $38,346,055.37. The net railway operating income, which was that sum remaining after deducting therefrom operating expenses, tax accruals, equipment rents and joint facility rents, $2,920,582.99. Other income amounted to $356,168.24, and total gross income, as that word is defined by the Interstate Commerce Commission, was $3,276,751.23. That was applicable, of course, to the payment of, or available for the payment of fixed charges.

Mr. Abeles: We offer that annual report, Mr. Examiner.

The Chairman: It will be received.

(Exhibit No. 1, Witness Stanley, is received in evidence.)

By Mr. Abeles:

Q. Is there any doubt, then, Mr. Stanley, of the financial ability of the receivers to operate the proposed service?

A. No, we have over $3,000,000 with which to pay the expenses of such operation.

Q. Have the receivers been authorized by the Court of their appointment to operate motor carrier service?

A. Yes.

(Discussion off record.)

Mr. Abeles: Mr. Chairman, I offer in evidence a copy of the application and order No. 207, in the receivership [fol. 1397] proceedings of the Seaboard Air Line Railway Company, in the District Court for the Eastern District of Virginia, the order having been entered July 15, 1937, authorizing the receivers to establish and operate motor carrier services over such routes in their judgment they deem desirable. That is a true and correct copy of the order as entered.

The Chairman: It will be accepted as exhibit No. 2.

(Exhibit No. 2, Witness Stanley, is received in evidence.)

By Mr. Abeles:

Q. Mr. Stanley, is there anything else you wish to say?

A. I would like to make this very brief statement, that so far as the public is concerned, that there will be no change whatsoever in our contractual relationship with it. The man who wants to ship an article of freight will

come to our station under this proposed arrangement as he has come under the old arrangement and get a railroad bill of lading. The consignee of that freight at destination will deal with our agent at that point just as he has dealt with him under the old regime. It may be that that freight that is covered by our railroad bill of lading will be handled partly by rail and partly by truck under the new plan, but neither the shipper nor the consignee will know anything about that change in the method of transporting the freight except as they may inquire why it is being deliv-
[fol. 1398] ered so much more promptly than it was under the old system.

Q. That method of transporting shipment is of course, authorized by published tariffs, is it not?

A. Yes. In other words, our tariffs will be the same. I I hope I have brought out the point I am trying to make. There may be a difference in the method in the physical handling of that freight as compared to the old system, but so far as our contractual relationship to the public is concerned, there is no change.

The Chairman: Mr. Stanley, this proposed line parallels your railroad out to Waxhaw on south to Atlanta?

The Witness: Yes, sir.

The Chairman: Do you have any other operations paralleling that line to Atlanta?

The Witness: No, sir. I might say this, that the policy of the Seaboard Air Line Railway in the operation of trucks has been to confine itself to the territory served by its rail lines and to the communities that are connected by those rail lines and that we have never sought to go off of our own bailiwick.

The Examiner: In this case, Mr. Stanley, you desire to serve intermediate points and terminal points in this proposed operation which are also stations on the Seaboard Air Line Railway?

The Witness: Absolutely, that is the point.

[fol. 1399] By Mr. Abeles:

Q. The three points named by Mr. Bowen are all stations on the Seaboard?

A. Stations on the Seaboard.

(Discussion off the record.)

Mr. Abeles: I would like to move the admission in evidence of all the factual parts of the application in this proceeding.

The Chairman: It will be so accepted.

(Witness excused.)

L. W. Rogers testified further as follows:

Direct examination (continued).

By the Examiner:

Q. In the application, Mineral Springs is described as possibly an off route point because the points where you will pick up and deliver freight, I understand, which is your freight station, is about 100 yards off the highway, N. C. 75. However, N. C. 75 goes through the Town of Mineral Springs, does it not?

A. That is correct. The highway and railroad parallel right through the town, something less than a block apart.

Q. Then a description of this operation as being between Waxhaw and Monroe, serving all intermediate points which are stations on the Seaboard Air Line Railway, would include Mineral Springs, would it not, without Mineral Springs being put in as an off route point?

[fols. 1400-1401] A. Yes, that is correct.

(Witness excused.)

J. H. Bowen testified further as follows:

Direct examination (continued).

By Mr. Abeles:

Q. Mr. Bowen, is free pick up and delivery service performed by the Railway in any of the communities which will be served by the proposed extension of the Hamlet-Monroe truck operation?

A. Waxhaw.

Q. The truck used for the performance of the extended service will also be utilized for the pick up and delivery service?

A. No, sir. We perform our pick up and delivery services in all instances with separate trucks.

Q. You do?

A. Yes.

(Witness excused.)

Mr. Abeles: That is the applicant's case, Mr. Examiner.

The Examiner: You don't desire to file brief?

Mr. Abeles: No.

The Chairman: That is all, then. The hearing is now adjourned.

(Whereupon, at 11:40 o'clock a.m., March 14, 1938, the hearing adjourned.)

[fol. 1402] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-86687 (Sub. No. 18)

In the Matter of the Application of the Seaboard Air Line Railway Co. (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation, of Seaboard Air Line Railway Building, Norfolk, Virginia, for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of Florida, between Jacksonville and Fernandina, Florida, via Yulee, Florida.

Hotel Mayflower, Jacksonville, Florida,
Wednesday, June 22, 1938, 9:00 O'clock A.M.

Met pursuant to notice.

Before: Joint Board No. 205

Present: Hon. Eugene S. Matthews, Chairman, Florida Railroad Commission. Richard Yardley, Examiner, Interstate Commerce Commission.

APPEARANCES:

W. J. Oven, Midyette-Moor Building, Tallahassee, Florida, appearing for Seaboard Air Line Railway.

Stanton Walker, Atlantic National Bank Building, Jacksonville, Florida, appearing for the Great Southern Trucking Company, Inc.

[fol. 1403] J. A. Bliss, P.O. Box 90, Jacksonville, Florida, appearing for the St. Johns River Line Company, L. & L. Freight Lines, Inc., Elliott Young Consolidated and Tamiami Trail Tours, Inc.

Jay C. Steadman, 1103 North Myrtle Avenue, Jacksonville, Florida, appearing for the K. & L. Transportation Company, Inc., of Waycross, Georgia.

Leo P. Kitchen and Dan R. Schwartz, 302 Atlantic National Bank Building, Jacksonville, Florida, appearing for R. C. Motor Lines, Inc., Jacksonville, Florida, and Wayne F. McJunkin Truck and Bus Line.

[fols. 1404-1405] Proceedings

Chairman Matthews: Let's have order.

The Interstate Commerce Commission has set for hearing at this time and place the application of the Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation, of Seaboard Air Line Railway Building, Norfolk, Virginia, for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of Florida, between Jacksonville and Fernandina, Florida, via Yulee, Florida.

Who appears for the applicant?

Mr. Oven: W. J. Oven, Tallahassee, Florida.

Chairman Matthews: Who appears for the protestants?

Mr. Walker: Stanton Walker, appearing for the Great Southern Trucking Company and I desire to file formal petion for intervention.

Mr. Kitchen: Leo P. Kitchen and Dan R. Schwartz, appearing for the McJunkin Truck & Bus Line, and the R.C. Motor Lines, Incorporated.

We have filed a formal petition of intervention, two copies being filed with the Reporter and the carbon copy with the applicant's attorney, Judge Oven.

Examiner Yardley: The two first appearances please [fol. 1406] state the position of these companies, as to where they operate, in other words, do they operate directly from Jacksonville to Fernandina?

Mr. Walker: No, they do not operate directly from Jacksonville to Fernandina.

Examiner Yardley: Now, what is your understanding in this proceeding?

Mr. Walker: The matter is, as will be shown by subsequent motion, this is a part of a coordinated interstate operation of the Seaboard Air Line. That, in connection with this other sub title, it will afford or may carry interstate traffic originating in Miami, Tampa and intermediate points through Jacksonville for Fernandina and may likewise transport southbound common carrier freight into Jacksonville for subsequent delivery into Fernandina.

Examiner Yardley: Is your position the same, Mr. Kitchen?

Mr. Kitchen: The interest of the McJunkin Truck & Bus Line is that this carrier operates over the same routes and from the same termini; I should say between the same termini as that as having been applied in the application by the applicant. The McJunkin Bus Line is a common carrier of commodities generally; the R. C. Motor Lines operate over a portion of the route from Jacksonville to Yulee and at Yulee and Jacksonville both make connections direct with McJunkin Truck & Bus Line; in addition thereto we use the same reasons as given by Mr. Walker.

[fol. 1407] Chairman Matthews: The McJunkin operates both intra and interstate?

Mr. Kitchen: Yes.

Mr. Steadman: Jay C. Steadman appearing for the K. & L. Transportation Company, Incorporated, of Waycross, Georgia, a corporation incorporated in Georgia, engaged in the business of transporting freight for compensation in interstate and intrastate commerce and feels that it has an interest in this case because of the fact that it interchanges interstate freight with the McJunkin Truck Lines and that due to the small amount of tonnage moving between Jacksonville and Fernandina that it stands a chance to lose what revenue it derives from that line as an interchange line and the addition of any competition on the part of applicant to that point between Jacksonville and Fernandina and the fact that we have no joint traffic arrangement with this company and one is proposed, we would suffer to that extent.

Mr. Bliss: J. A. Bliss, Jacksonville, Florida, appearing for the St. Johns River Line Company of Jacksonville, Florida, the L. & L. Freight Lines, Incorporated, of Jacksonville, the Tamiami Trail Tours, Incorporated, of Tampa, all in opposition to the granting of the application.

All of those named are common carriers by motor vehicle in both interstate and intrastate commerce, and the St. Johns River Line is, in addition, a common carrier by water [fol. 1408] in both interstate and intrastate commerce.

None of these carriers has direct service between Jacksonville and Fernandina, but they are interested in the preservation of motor service between Jacksonville and Fernandina with which carriers are free to interchange. We are furthermore considering the situation created by these numerous applications on the part of this applicant, which appear to be susceptible to linking together into a wider motor carrier operation, the exact scope and nature of which we cannot even predict at this time.

In addition, the St. Johns River Line Company has an interest as a carrier by water, in that it passes Fernandina, Florida, each night, although its boats do not stop; none of the parties I represent desires to broaden the issues in any way.

Mr. Oven: Before we proceed with this hearing I would like to reserve one point, the applicant here filed with the Interstate Commerce Commission for registration under the proviso appearing at the last part of paragraph 206a of the Motor Carrier Act. We contend that since this operation is wholly within the State of Florida and since there is a commission within the state authorized to grant or approve such a certificate and since the Commission has granted a certificate for intrastate commerce, that such a proviso is applicable to our application for registration. Subject to that, we will proceed now with the proof under [fol. 1409] the application for certificate of public convenience and necessity.

Examiner Yardley: Do I understand now that you are taking two shots at this matter, you want your application heard and in the event it should be denied then you will rely upon your registration?

Mr. Oven: I take that to be the case, my understanding is the Commission took the position that since we operated into more than one state, but different truck lines operated

in two different states, that this clause is not applicable, but I simply wish to reserve the point.

Mr. Walker: That question is before the Interstate Commerce Commission now in some other cases and has not been passed upon and Judge Oven is trying to reserve the question here.

Mr. Kitchen: Mr. Chairman, may I be heard? I want to put into the record one or two questions, I would like to ask Judge Oven relative to his opening statement, if he is relying upon the right, the intrastate rights, as allowed L. R. Powell, Jr., and Henry W. Anderson, Receivers of the Seaboard Air Line, of Norfolk, Virginia, the Order being No. 793, Docket 216, issued by the Florida Railroad Commission.

Now, Judge Oven, are you relying on such rates as have been granted to the Seaboard Air Line Railway by such order?

Mr. Oven: Let me see that order—no.

[fol. 1410] Mr. Kitchen: What order are you relying on?

Mr. Oven: An order made by the Commission last year, September, I think, for intrastate service.

Mr. Kitchen: What order is that, may I inquire?

Mr. Oven: An order made by the Commission permitting service from Jacksonville to Fernandina and return by Yulee.

Mr. Kitchen: Would you mind examining that order and telling me if that is the one?

Mr. Oven: I told you that is not the one, this was an order by the Commission permitting supplemental service, later on, attached to House Bill 138, we filed an application and that was granted.

Mr. Kitchen: That is what I wanted to know, whether that application was granted for a hearing and finding of public convenience and necessity or is it recognized that House Bill 138 gave permissible right to the Seaboard Air Line?

Mr. Oven: It was granted upon an application made under provisions of House Bill 138; now, Chapter 18027, Acts of 1937, the effect of that chapter was to so amend Section 27 of Chapter 14764, Acts of 1931, as to relieve the railroad of the necessity of proving public convenience and necessity, but nothing else, and the Supreme Court of Florida has construed that Act in effect as wholly that the legis-

lature determined such was a public convenience and necessity and I will state that the Supreme Court of Florida has [fol. 1411] passed on the validity of the Act and petition for rehearing was filed and heard and the court reaffirmed its judgment, a week ago last Friday.

Mr. Kitchen: Nevertheless, isn't it a fact that this Act grants this certificate as a ——

Mr. Oven: I have stated the facts.

Mr. Kitchen: That is a fact that I stated too—that the Act itself grants certificate as a matter of right upon application.

Mr. Oven: So far as public convenience and necessity.

Mr. Kitchen: So far as the railroad is concerned?

Mr. Oven: From station to station on the line of the railroad.

Mr. Steadman: As a matter of information to me, isn't this a hearing for public convenience and necessity? I would like to know if that is the case, what is the occasion of the introduction of any reserves, I don't get the point, I see no occasion for it, I can see no place in the record for it. I would like to move that it be stricken.

Chairman Matthews: I think we have to let the applicants conduct their own case.

Mr. Bliss: I would like the record to show that we disagree with Mr. Oven's interpretation of Section 216.

Examiner Yardley: You can argue that on a brief. So far as my understanding is concerning Judge Oven's position in this matter, he can have two chances at it, it can be ruled [fol. 1412] on by the Commission and in the event he wants to take it to court he can do so.

Mr. Kitchen: I was merely trying to find out.

Mr. Walker: Comes now the protestant, the Great Southern Trucking Company, and moves to dismiss the present application of the Seaboard Air Line Docket MC-86687, Sub-Title 18, or to postpone the hearing thereof until such time as a board may be appointed having jurisdiction of this case under the Motor Carrier Act of 1935, upon the following grounds:

1. That Joint Board 205, composed of one representative of the State of Florida, does not, under the Motor Carrier Act of 1935, have jurisdiction to hear and determine the matter of interstate commerce involving necessary coordinated transportation service through more than one state.

2. That, by virtue of the present application being for interstate service, it is obvious that transportation and coordinated transportation covering more than one state is requested.

3. That application, Sub-Title 18, is one of at least coordinated applications filed by the same applicant throughout the Southern States, brought by the Seaboard Air Line Railway Company for motor carrier freight service.

That as such a board composed of representatives from each state or in the event of more than three states being involved, it is necessary that an examiner or special board, [fol. 1413] with proper jurisdiction in this case, be appointed.

That it is apparent from Sub-Title 18 application and the other applications for this class of service, that it is intended by this applicant to present a coordinated motor carrier common carrier freight services throughout the Southern States, this being one of 18 of such coordinated services. I might state that this is no reflection on our good Chairman, but I will take this point that it should be considered a coordinated operation requiring the hearing by one examiner.

Now, I might add that that objection was filed at the hearing in Tallahassee involving the same MC number and Titles 9 and 10, and I understand the point has never been decided by the Interstate Commerce Commission.

Examiner Yardley: It is also before the Commission in other sub-numbers, so the ruling would be the same.

Mr. Walker: I think all except this one.

Mr. Kitchen: I want to join in the motion—the McJunkin Bus & Truck Line and the R. C. Motor Lines wish to concur in joining the motion that was made by Mr. Walker and further say that this Commission should dismiss that application as the docket number is a clear manifestation of a coordinated service and there should be a consolidation of said application and heard at one time.

Mr. Steadman: In behalf of the K. & L. Transportation Company, I wish to concur in the motions made by Mr. Leo [fol. 1414] P. Kitchen and Mr. Stanton Walker.

Mr. Bliss: I also concur in their motion.

Chairman Matthews: The ruling will be reserved and the Board will proceed with the case.

W. L. STANLEY was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. What, if any, position do you hold with the Seaboard Air Line Railway?

A. I am Vice-President of the Seaboard Air Line and chief public relations officer for the Receivers of that company.

Q. How long have you been connected with the system?

A. Thirty-seven years.

Q. State, to your knowledge, how long the line of railroad has been operated by the Seaboard Air Line as between Jacksonville, Yulee into Fernandina?

A. I don't know as I can give you the exact date of the construction, but it was one of the earlier railroads built in Florida and at one time it was considered practically the main line of the railroad from Fernandina through Jacksonville to Cedar Key, which ante-dates the Civil War.

Q. Has the Seaboard Air Line been operating trucks of recent years, and if so, how long?

A. For about six years, the Seaboard Air Line has been operating trucks, we have an operation in North Carolina, [fol. 1415] two in North Carolina, one in the State of Georgia and several in the State of Florida, the first operation that we had, as I recall, it began in 1932 in the State of North Carolina from Monroe to Hamlet, North Carolina, the next operation was started April 1st, 1933, for the handling of passengers, mail and express between Monticello and Drifton and others in Florida followed soon after that date, and some of recent certification.

Q. The Seaboard Air Line has had some five or six years' experience?

A. Yes, about six in the operation of truck lines.

Q. Didn't you obtain from the Railroad Commission of Florida a certificate to operate as between Yulee and Fernandina a truck on or about the 6th of October, 1935?

A. Yes, that truck is now being operated in the handling of intrastate freight business.

Q. Then, didn't you last year apply for a certificate, under Chapter 14764, as amended by the Legislature of 1935 of Florida, as between Jacksonville, Yulee and Fernandina?

A. That is right.

Q. Have you been operating a truck since the granting of your certificate?

A. Since that date and now that truck is being operated between Jacksonville and Fernandina, via Yulee in the handling of intrastate freight business only.

Q. Then, the purpose of this application here today is what?

[fol. 1416] A. The request of this application is that we be permitted to handle that truck on interstate freight.

Q. What is the policy of the system in general, Mr. Stanley, with relation to the operation of these trucks?

A. We have, from time to time, studied the various sections of our railroad, the Seaboard Air Line having approximately 4,400 miles of track in six states, to see where we can coordinate or improve our service by supplementing our rail service with motor vehicle service, exclusively for the handling of express and freight, not passengers; each territory is studied very carefully and where we feel we can improve that service or more economically expedite the movement of freight, we have sought to permit certificates from the State and Interstate Commerce Commission for authority to encourage such service.

Q. I hand you now a document which I will ask that it be marked for identification as applicant's Exhibit No. 1, and ask you to state what that is?

A. This is the annual report of the Receivers of the Seaboard Air Line for the calendar year 1937.

(Exhibit 1, Witness Stanley, marked for identification.)

Q. Will you read into the record from that report the pertinent portions of it showing the financial ability of the Receivers to operate this service here sought?

A. For the year 1937 the gross operating revenue of the [fol. 1417] Seaboard Air Line system was $41,502,866.96; its net railway operating income was $4,348,988.18; other income amounted to $380,355.32, and the total gross income of the railroad was $4,729,343.50; in other words, that last sum was the amount of money remaining after deducting from the gross operating revenue of the railroad, operating expenses, taxes, rentals and things of that kind, and which would have been applicable to the payment of interest on bonded indebtedness. In other words, the Receivers had $4,729,343.50 available to pay for the cost of operation of trains or trucks.

Q. I think you stated this truck is now being operated in intrastate commerce?

A. Yes.

Q. Then the handling of interstate freight on that truck would increase the cost very little, if anything?

A. Yes, I think that perhaps another witness, Mr. Sauls, is more competent to testify on that, but the truck is not handling anything but intrastate and the adding of the interstate would add very little to the expense of operation and also affect it economically, which Mr. Sauls will testify to.

I might say this, in connection with the question you have just asked me, that we have a good many purposes in our effort to inaugurate truck service, it varies with the sections of the line of railroad along which we seek to operate this truck service. In some instances, and in most [fol. 1418] instances the freight will be handled partly by train and partly by truck. Where this is the case, we can expedite the movement of LCL freight from large distributing centers to the smaller stations and deliver it very much more quickly than we can by the operation of trains; another thing that probably will result from it, certainly in many situations, is that local freight trains are now being largely operated in the daytime, due to the fact that the agents at smaller stations are on duty in the day. If we can operate these local freight trains in the night time it will enable us also to expedite the movement of carload freight, especially that which is assembled at smaller industries and smaller places. Instead of waiting over after the day's loading is completed until the local freight comes along the next day, it will be moved out a few hours after the loading is completed by the local freight, if it operates at night. Now then, the local freight trains, as a rule, switches small industries, sawmill plants and those of a similar character at the least important towns. Instead of interrupting the operation of those plants during the daytime, by placing cars and taking cars away from them, that switching will be done largely at night and when the plant itself is not in operation and afford that convenience and the saving of that expense to the plant itself. I just mention one or two of the things that we have generally in mind in trying to determine whether or not a truck operation in a particular territory

[fol. 1419] would be a desirable thing, either in giving better service to the public or in effect, economically——

Q. Mr. Stanley, does the operation of the freight trains handling carload shipments at night benefit the shipper in anyway, if so, how much?

Examiner Yardley: Are you able to operate from Jacksonville to Fernandina?

The Witness: Either way.

Examiner Yardley: All right.

The Witness: The sooner that you are able to get your carload freight to destination for delivery the following morning, the better it is, of course, for the receivers of goods. In this particular case, speaking of the operation between Jacksonville and Fernandina, there will be no curtailment of train service, there will be a material expedition of the handling of less than carload freight.

Cross-examination.

By Mr. Kitchen:

Q. What interstate freight can be anticipated of the volume for you?

A. There is another witness, Mr. Kitchen, that has those exact figures.

Q. I presume that he likewise will testify with reference to the financial report?

A. He won't testify to the financial report, I testified to that.

[fol. 1420] Q. What is the bonded indebtedness of the Seaboard Air Line Railway?

A. I will have to look and tell you, it is rather high, you will find the balance sheet on Page 15, Mr. Kitchen, of the exhibit which I just filed and while I would have to separate, if I deduct it or the common stock and so forth, all of those figures beyond there, I don't know unless I deduct it.

Q. That is all right, it is in evidence?

A. Yes.

Q. The net railway operating income of $4,348,988.18, did I understand you to say that that was paid on the bonded indebtedness?

A. No, I said it was available, it was not paid, it was available for payment on interest on bonded indebtedness; as a matter of fact, since the receivership of the Seaboard

Air Line, dating from December 23rd, 1930, no interest has been *has been* paid on the bonded indebtedness except a part on the underlying bonds of the railroad.

Q. And it is out of that net railway operating income that you allege financial ability to operate this freight line; in other words, the money is available for operation of additional trains or trucks?

A. Yes, something over four million dollars.

Q. Is there anything in this exhibit, which I presume is Exhibit 1, for the applicant, which would show a separation [fol. 1421] of cost of operation and revenue earned by trucks?

A. We consider the operation of the trucks as a part of the railroad plant and the revenue derived from the operation of the trucks goes into the gross earnings of the railway and the expenses of operating those trucks go into the operating expenses of the railroad, there is no separation of it.

Q. May I ask then, if you keep separate records for your truck companies?

A. We do not keep a separate record of the earnings or expenses, here and there some of our superintendents, in order to be advised of the cost of operation, have kept such a record but it doesn't go into the records of the company.

Q. With reference to shipments, do you keep a separate record of shipments, not including income, separate and apart from your railroad records?

A. No record except that may be kept here and there by an agent, it doesn't go into the general accounting of the railroad, we consider it a part of the railroad; in other words, it would be almost impossible to do that, it would involve the keeping of two separate accounts, it would involve the separation of earnings of rail and highway carriage, where it was handled by rail partly and by truck partly.

Examiner Yardley: If the Interstate Commerce Commission does grant you a certificate, then you will keep your records in accordance with their rules and regulations?
[fol. 1422] The Witness: Yes, of course.

Q. That was what I was getting at—Mr. Stanley, do you publish a separate tariff?

A. We have but one tariff and that is our rail tariff and our charges, regardless of whether the haul is by rail or truck, is the same.

Q. How is the public to be advised as to whether or not a shipment will move by truck or rail?

A. I don't think the public is interested in it, all they are interested in is getting their freight moved as quickly as possible.

Q. You don't think the public is entitled to know of the transportation facilities you use?

A. If I make a shipment from point A to B, it doesn't make any difference to me, just so it is safely and substantially handled, if it is moved by wheelbarrow——

Q. Assuming I was a shipper and was opposed to the use of trucks for the transportation of my merchandise and I favored railroad transportation, for that reason I favor railroad transportation I turned the shipment over to the Seaboard Air Line, how may I know that is transported by rail or truck?

A. There is no way that the shipper, unless he happens to investigate it, can tell whether it moved by rail or truck.

Q. Isn't that deceiving the public?

A. No, because as I understand it, the public is interested [fol. 1423] in the broad question of transportation, the expeditious moving of the traffic.

Q. And you think the public is not interested in the facility in which it is used?

A. I don't think they care an iota, the public——

Q. And in order to serve such public wants and needs, is that the reason for the establishment of this truck line?

A. I have stated in the beginning that we had two purposes, first to expedite through this coordinated service the movement of freight, and second, to effect economy wherever possible to do so.

Q. Then is it the position of the Seaboard Air Line Railway or its receivers, I should say, that in filing an application for a truck line service, that it is giving a more expeditious service to the public?

A. In certain instances, yes, as we think would appear from the testimony that will be introduced in this particular application.

By Mr. Bliss:

Q. You used the word "coordinated", I believe, in your direct testimony, did you mean coordinate between carriers operating different means of transportation facilities?

A. I meant coordination between our operations by rail and our operations by truck.

Q. You stated that the handling of interstate freight will cost but little, are you prepared to substantiate that with [fol. 1424] detailed figures?

A. I said there would be a witness who would give these figures, but inasmuch as we were now operating a truck between Jacksonville and Fernandina, handling intrastate business, which was not loaded to its capacity, that it was obvious that the additional interstate traffic which we would put on that truck would increase the cost of operation but little.

Q. As I understand it, you make the selection of rail or truck service rather than leave that choice to the shipper?

A. When the shipper delivers a shipment to move between two points, it is our opinion that he is only interested in getting it from one point to the other and as promptly as possible and it doesn't make any difference to him by what instrumentality it is moved.

Chairman Matthews: Mr. Bliss, don't get over the same ground.

Mr. Bliss: I was expecting a yes or no answer.

The Witness: You can't answer those questions yes or no.

By Mr. Steadman:

Q. Mr. Stanley, in the beginning, I believe you stated that the Seaboard Air Line is a corporation?

A. Yes, it is now in the hands of the receivers.

Q. Chartered under the State laws of Virginia?

A. Virginia, North Carolina and other states, I just don't know which ones exactly.

Q. Do you know whether or not the charters that the cor- [fol. 1425] poration holds in the various states provide they shall be entitled to run trucks?

A. I don't know about that, I do know the court appointing the receivers has authorized them to put on truck lines wherever in their judgment they think they should be established and can get certificates for them.

Q. Do you know whether or not the courts in giving that permission considered that fact or investigated it thoroughly?

A. I don't know what actuated the court in doing it.

Q. I notice in your exhibit here, one item, I would like for you to explain, if you please: "Continued operation of pick-up delivery trucks", Page 7, under "Revenue and Expenses", the next to the last paragraph, continued operation of pick-up and delivery service has enable the Seaboard Air Line to handle a substantial volume of LCL that otherwise would have moved by truck. Do I understand that by the inclusion of that in the record that it is the purpose of the Seaboard Air Line to deprive the trucks of all the tonnage they possibly can?

A. We hope to get all of the business that it is possible for the best service that we are capable of rendering, to control, that is all I can say.

Q. Do you propose then at anytime in the future to enter into any negotiations with the truck lines with the idea of joint rate arrangements?

A. At present, we have no such intention.

[fol. 1426] Redirect examination.

By Mr. Oven:

Q. If this certificate applied for here is granted, will the receivers abide by all the rules and regulations of the Interstate Commerce Commission imposed upon them so far as the operation of the trucks is concerned?

A. They will.

Chairman Matthews: The proposal here is to offer station to station—as you are operating your intrastate?

The Witness: Yes, in other words, to render interstate service that we are in the same manner rendering intrastate service.

Recross-examination.

By Mr. Steadman:

Q. In the event that this application is granted, would the Seaboard Air Line be willing to enter into joint arrangements with the K. & L. Transportation Company?

A. It would not.

By Mr. Bliss:

Q. Do you have through water and rail rates from New York and via Jacksonville?

A. I am not a rate man, I think now that we have, I am quite positive we have, but I am not a rate man.

Q. Would you apply those rates in connection——

A. In other words, whatever rate applies by water and rail from New York to Florida today, where our haul is solely by rail, would also apply if our haul was partly by truck, we are not charging the rates, we are simply charging [fol. 1427] for a shorter distance, the method of convenience.

Q. Partly by truck and not at all by rail?

A. It might come in by rail from some place but if by water LCL shipments to Jacksonville we would probably handle it exclusively by truck from Jacksonville to Fernandina.

By Mr. Steadman:

Q. Have you made a survey or will you show by witnesses who have made a survey, as to the amount of potential tonnage there will be to move?

A. There will be witnesses who will testify as to the amount of intrastate freight and interstate freight, less than carload, moving both by truck and rail between Jacksonville and Fernandina today.

Chairman Matthews: Any further questions of this witness?

Mr. Oven: I have none.

(Witness excused.)

W. H. Simms was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. Is this Mr. W. H. Simms?

A. Yes.

Q. Where do you live, Mr. Simms?

A. Fernandina, Florida.

Q. What, if any, connection do you have with the Seaboard Air Line system at Fernandina?

A. Local agent.

[fol. 1428] Q. How long have you held that position?

A. Since February 1931.

Q. I hand you herewith a paper which has been marked Exhibit No. 2, Sheet No. 1, and ask you to state what that shows?

A. Sheet 1 covers intrastate LCL freight handled by highway truck from Jacksonville to Yulee and Fernandina from November 20, 1937, to June 15, 1938, both inclusive.

(Exhibit 2, Witness Simms, marked for identification.)

Q. Now, this service began in November, 1937?

A. Yes.

Q. What does this sheet No. 1 show as to the total number of truck trips between Jacksonville and Fernandina?

A. 175.

Q. What does it show as to the total tonnage?

A. It shows it handled 854,194 pounds.

Q. What is the average total then per trip?

A. 4,864.

Q. Now, that is tabulated from November 20, 1937, down to June 15, 1938, inclusive?

A. Yes.

Q. And is solely intrastate freight?

A. Yes, sir.

Q. Now, I hand you sheet 2, what does that show?

A. It is a statement of intrastate less carload freight handled by highway truck from Fernandina to Yulee and [fol. 1429] Jacksonville from November 20, 1937, to June 15, 1938, both inclusive.

Q. In short, that is the southbound movement?

A. Yes.

Q. Intrastate freight?

A. Yes, sir.

Q. How many trips?

A. 175.

Q. Total tonnage?

A. 190,204 pounds.

Q. Average tonnage?

A. 1,160 pounds.

Q. Now, I hand you sheet 3 of Exhibit 2 and ask you to state what that is?

A. Sheet 3 covers interstate carload freight handled in cars by rail from Jacksonville to Fernandina from November 20, 1937, to June 15, 1938, both inclusive.

Q. That is northbound interstate freight?

A. Yes, sir.

Q. Which moved by train only?
A. Yes, sir.
Q. Now, what is the total number of cars
A. 293.
Q. Total weight?
A. 2,213,485 pounds.
Q. Average weight per car?
[fol. 1430] A. 7,761 pounds.
Q. Now, I hand you sheet 4 of Exhibit 2 and ask you to tell us what that is?
A. Sheet 4 of Exhibit 2 represents interstate less carload freight forwarded from Fernandina to Jacksonville from November 20, 1937, to June 15, 1938, inclusive in cars by rail.
Q. That is southbound?
A. Yes.
Q. Interstate?
A. Yes.
Q. That shows how many cars?
A. 77.
Q. Total tonnage?
A. 316,527 pounds.
Q. And the average tonnage per car?
A. 4,367.
Q. Now, I hand you sheet 5 of Exhibit 2 and ask you to state what that is?
A. Sheet 5 is a summary of all LCL freight handled from Fernandina to Yulee and Jacksonville, by both truck and in cars from November 20, 1937, to June 15, 1938, both inclusive.
Q. That then is the summary as to inbound freight or northbound freight of sheets 1 and 3 and as to outbound or southbound?
A. Well, on the first section, that is a summary of out-
[fol. 1431] bound freight, southbound as covered by sheets 2 and 4, sheet 2 is represented on this summary as representative of intrastate, which is the 190,204 pounds covered by sheet 2.
Q. And that was handled by truck?
A. Yes.
Q. And now sheet 4 is the total of LCL freight interstate?
A. Interstate, yes.
Q. And that shows 316,527 pounds?
A. Yes.

Q. Or a total of 506,731 pounds?

A. Yes.

Q. And the average load per truck outbound would be what?

A. Per truck trip would be 2,895 pounds.

Q. Now, with reference to inbound?

A. Handled by truck, sheet 1, intrastate, 854,194; handled in cars, sheet 3, interstate, 2,213,485 pounds, that makes a total of 3,067,679 pounds or an average load per truck trip, assuming that it was all handled by truck, of 17,529.

Q. Then, in short, the combination of the LCL interstate freight handled now by rail and the LCL intrastate freight handled now by truck would, as a matter of fact, just about make a good healthy truck trip load each way, would it not?

A. Particularly inbound.

Q. Now, this inbound interstate commerce freight, from where does it come?

[fol. 1432] A. It originates all over the country, however, it is consolidated at Jacksonville and is loaded by the Jacksonville Forwarding Agency.

Q. It goes into Jacksonville over the Seaboard Air Line?

A. Yes, and other lines.

Q. That then is freight that would naturally be turned over to the Seaboard Air Line for delivery at Fernandina?

A. It is handled into Jacksonville by carriers other than motor carriers.

Mr. Kitchen: Mr. Chairman, I hate to interrupt at this particular point, but I would like to inquire as to whether or not counsel for the applicant has supporting papers in which we may examine in support of the said tabulations and testimony as given by the witness.

Mr. Oven: I will answer that question very promptly. We haven't it here, I will ask the witness this question.

Mr. Kitchen: Just a minute—Mr. Chairman, in view of the answer of counsel that he has no supporting evidence, in forms of way bills or any other manner of proof to substantiate said tabulations, I object to the testimony of the witness and move that it be stricken from the record, and completely deleted and in support of said motion say that the protestants are deprived of the right of cross examination and deprived of the right of being appr'sed with the

documentary evidence in support of said tabulation through-
[fol. 1433] out all of these hearings involving motor carrier and this is a motor carrier application. This Commission—this Interstate Commerce Commission and this Board, upon which you, as Chairman, have sat in Board 205 and Board 64 and various others, and this Examiner, it has been the practice and the required procedure that such tabulation be substantiated with proof. Such proof is not offered and we are deprived of the right of cross examination; I again renew the motion to strike the testimony and delete the same from the record and in fairness to the applicant ask if he wishes additional time to comply with the procedure as has previously been followed by the Interstate Commerce Commission and its various state boards, that we will not object to a postponement of this hearing for such purpose.

Mr. Oven: Mr. Chairman, it rather looks as if I possibly put the cart before the horse. Before any ruling is announced I would like to interrogate Mr. Simms as to where he got these figures.

Chairman Matthews: All right.

Q. Mr. Simms, who prepared these sheets, one, two, three, four and five for the Exhibit No. 2?

A. I did, personally.

Q. From what did you obtain the data appearing on these sheets?

A. From the original records on file in the office of the Seaboard Air Line Railway at Fernandina, of which I am
[fol. 1434] the custodian.

Q. Is this a true and correct reproduction of what they show?

A. Yes.

Mr. Oven: We now offer the same evidence as we have offered heretofore.

Mr. Kitchen: I renew that motion, it is clearly following the procedure that is required of motor carriers.

Examiner Yardley: You are telling the Board what it has done in the past and what the Examiner has done and I think the Chairman will deny your motion.

Chairman Matthews: The motion will be denied and you may proceed.

Mr. Kitchen: I further move to strike from the record and object to the introduction into evidence of sheet 1 of

said exhibit and sheet 2 of said exhibit as being immaterial, irrelevant and incompetent, same clearly showing an intrastate movement and has no relation or bearing to this application praying for interstate operation.

Chairman Matthews: Overruled.

Cross-examination.

By Mr. Kitchen:

Q. Where do you get the volume of interstate freight, where does it originate that is shipped into Florida?

A. Briefly speaking, from eastern seaport cities and [fol. 1435] Pacific Coast cities, it covers practically the whole United States.

Q. What comprises most of the commodities shipped into Fernandina?

A. It is a general line of merchandise, including what would be termed groceries or provisions, dry goods, notions, hardware, building materials and commodities of similar character, machinery and machinery parts and so forth.

Q. Does the majority of that freight move by carload or less than carload lots?

A. All of the freight covered by these statements moved as LCL.

Q. On your outbound freight from Fernandina, what did you say was the volumne, interstate freight only?

A. That is covered by sheet 4, the volume was 316,527 pounds.

Q. That is by rail, isn't it?

A. Yes.

Q. What volume do you transport now by truck in interstate commerce?

A. What part by truck?

Q. Yes.

A. None.

Q. What comprises the greater portion with reference to commodities of the freight shipped from Fernandina?

A. Canned shrimp, oysters, fish meal, a considerable portion of it returned empty; oxygen and acetylene gas tanks [fol. 1436] and miscellaneous other freight.

Q. What proportion of your outbound freight was pogy fish or pogy fish products?

A. Well, I should say about ten per cent.

Q. Ten per cent?

A. Yes, it probably would not exceed seven and a half per cent of the total outbound freight.

Q. How many carloads of fish meal did you ship for the fish meal company a month?

A. It varies during the season, from thirty to as high as 130.

Q. Carloads a month?

A. Yes.

Q. How many pounds is there in a carload?

A. The minimum for fish meal is 18 tons and on fish scraps used for fertilizer purposes is 20 tons.

Q. Approximately how many carloads do you ship out during a month for the Nassau Fertilizer Company?

Examiner Yardley: Just what is the purpose of the carload shipments, Mr. Kitchen?

Mr. Kitchen: He has introduced an exhibit in there showing the recapitulation of all the freight as having been transported to and from Fernandina and I want to show the majority of it is not such freight as is applicable or suitable to be transported by truck.

[fol. 1437] The Witness: Will you let me say that these figures are less carload freight only.

Mr. Kitchen: I am sorry then, that was my interpretation.

Examiner Yardley: I would like to know from this witness how many freight trains you operate in each direction daily?

The Witness: One round trip a day.

Q. How many schedules per day does your truck operate?

A. One round trip.

Q. What hour in the day does it operate?

A. It leaves Jacksonville at six-thirty a.m., scheduled to arrive at Fernandina at eight; it leaves Fernandina at four p.m., and is scheduled to arrive in Jacksonville at five-thirty p.m., week days only.

Q. A shipment originating today in Richmond, Virginia, destined for Fernandina, Florida, by rail, less than carload shipment, what day would it be delivered in Fernandina?

A. I think, Mr. Kitchen, you would perhaps rather develop that fact from the division superintendent who is

present; that schedule approximately, that is the third morning delivery or the fourth morning.

Q. How much quicker could that delivery be made by the inauguration of an interstate trucking service?

A. Under the present operating conditions that shipment could be loaded at Jacksonville and handled out of Jacksonville to Fernandina by car, arriving at Fernandina be-
[fol. 1438] tween eight-fifteen in the morning and, say, ten-thirty in the morning, or possibly eleven o'clock; by truck the same shipment, if handled from Jacksonville, would be in Fernandina at eight o'clock.

Q. A matter of two or three hours?

A. On that particular instance, yes.

Q. How far is it to Fernandina by road from Jacksonville, do you know?

A. It is supposed to be 34 miles.

Q. So your coordinated truck service over such a short distance would make very little difference in time, is that correct?

A. Well, it depends upon the direction in which the shipments move.

Q. What is your train schedule from Fernandina, do you know it?

A. The present schedule is Train 158 and 157—158 is due to arrive at Fernandina at eight-fifteen a.m., it is scheduled to depart at eight-forty-five a.m.

Q. Please repeat again your truck schedule?

A. At six-thirty from Jacksonville, arriving Fernandina at eight.

Q. That is fifteen minutes difference in the arriving time of train and truck?

A. The schedule time?

[fol. 1439] Q. Yes, you operate on schedule?

A. No, these trains—158 is the train into Fernandina and it sometimes handles heavy tonnage, its average arrival is from ten to eleven and sometimes as late as twelve, due to heavy tonnage, and to our having to stop along the road and unload LCL freight moving in interstate traffic.

Q. How long have you lived in Fernandina?

A. Since the first day of March, 1904.

Q. You are fairly well familiar with the business concerns in Fernandina?

A. Yes.

Q. Would you mind naming some of them for the benefit of the record?

A. The D. A. Kelley Company, general store, and Kelley Bros. Company.

Q. Is that the same store?

A. No, it is a general store, that is a grocery store; the Standard Hardware Company, A. S. Allen Dry Goods Company, Patterson Five to Ten Cent Store and R. B. Lockwood Drug Store.

Chairman Matthews: We will have a recess for a few minutes at this time.

(Short recess.)

Q. Mr. Simms, before we took a short recess you were naming the number of business and industries in Fernan- [fol. 1440] dina, just to make it short, what is the population of Fernandina?

A. The last census was 3,034 people.

Mr. Kitchen: No other questions.

By Mr. Biiss:

Q. In making up these figures, how do you define the LCL shipments, for instance, there are some commodities that move in Florida under an any-quantity rate?

A. By the size of it, the weight of it.

Q. If you had a shipment of grain that moved tenth class any-quantity, how much would that shipment have to be to be called a carload shipment?

A. Grain and grain products doesn't all move on any-quantity rates.

Q. Some of it does?

A. With this distinction, less than carload shipments require certain packing and tagging that carloads do not.

Q. Didn't you have some way of distinguishing between a certain number of pounds moving out any-quantity rate LCL and a certain greater number of pounds in carload shipments?

A. Tariff and classifications publish the minimum carload on grain and grain products.

Q. But if such a tariff——

Examiner Yardley: Can we shorten it this way—you stated you shipped sometimes by the weight—what is the minimum weight?

The Witness: That would be determined by the classifica-
[fol. 1441] tion or tariff minimum, carload and LCL shipments.

Q. There are such things as any-quantity rates?

A. Yes, but an LCL shipment would be determined by the very nature of the shipment itself.

Examiner Yardley: All shipments that were charged with the LCL rate?

The Witness: Yes, that were covered by this statement.

Q. If you had a shipment of 60,000 pounds which was assessed tenth class rate and you could have taken from that shipment 200 pounds and shipped it at the tenth class rate, would you call that an LCL shipment?

A. 200 pounds?

Q. Would you call this 60,000 pounds——

A. A carload.

Q. Where is the dividing?

A. The classification provides the dividing line.

Examiner Yardley: None of these shipments that you have in mind are included.

Q. You took the straight average in each case, did you not?

A. How do you mean?

Q. By dividing in this case on your sheet 1, total tonnage by the number of trips?

A. Yes.

Q. Do you have available the greatest number of pounds on a single trip or the least?

[fol. 1442] A. I would say no, for the reason that the figures as here given are by months or portions of a month and I couldn't say what the greatest number of pounds in any one car on any one day or the greatest number of pounds on any one truck in any one day happened to be.

Q. Did you have any shipments in intrastate commerce that moved between Jacksonville and Fernandina by rail LCL?

A. If so, they were included in the interstate traffic, I don't think so, however.

Q. Isn't it reasonable to presume that you would have had a few pounds of interstate that would have moved by rail?

A. It is probable.

Q. Intrastate, I mean?

A. Yes.

Q. You say that is included with the interstate traffic?

A. To the extent that such intrastate, less than carload freight, did move in the car, but that would be a very small figure.

Q. Did you make these compilations from sheets showing the weight unloaded from each car or truck?

A. From the billing.

Q. You have marked the billing but don't know whether it moved by truck or rail?

A. It shows that.

Q. A shipment is billed differently if it is rated by a truck?

[fol. 1443] A. Nothing except the car number—in other words, a shipment loaded in a car would have the car number on the way bill, if loaded in the truck it has the truck—

Q. So you picked out from those, and I assume that all the intrastate shipments moved by truck?

A. No.

Q. All the LCL moved by truck?

A. No, I gave the exact tonnage that the truck did handle without any estimation at all, in other words, it was made up from the records showing it was moved from Jacksonville to Fernandina by truck.

Q. Now you show truck trips approximating 25 per month, that is one every week day, is it not?

A. Yes.

Q. Did you ever have two?

A. No, sir.

Q. On sheet 3 where you show the number of cars you sometimes have as many as 50 or 51 cars, that would mean that some days there would be two cars handled LCL freight?

A. Yes.

Q. During the month of December your average is shown as 5,000 and a fraction pounds per car, that would be less than capacity?

A. Very much.

Q. And yet you used 50 cars, could you explain that?

[fol. 1444] A. Light tonnage.

Q. You mean bulky?

A. Light commodities, yes.

Q. Well, do you mean bulky?

A. Light in volume and bulky both.

Q. About how long were the cars that you used?

A. From 36 to 50 feet.

Q. They are larger than truck bodies, then?

A. Yes.

Q. A shipment that would be bulky in a freight car and require an additional car would be certain to require an additional truck trip?

A. Depending on the size, there are, of course, certain commodities that would be so bulky that they wouldn't go in the average truck, in fact, they would require a special large car.

Q. You do not have available or do you have available, even for a short period, such as a month or a part of a month, a trip record of your trucks, tonnage per truck?

A. That is on file in the office in Fernandina.

Q. I thought you said you compiled the figures from the way bills at the end of the month?

A. That can be broken down to cover each day.

Q. Could you supply for a reasonable period tonnage by trips, say, for more than a month?

[fol. 1445] Mr. Oven: You have got it there by months.

Mr. Bliss: We would like to know the range, for instance, 40,000 one day and 200 the next.

Mr. Oven: He has told you in any case as he used over one truck a week.

Examiner Yardley: My understanding was it was one truck a day.

Mr. Bliss. Perfectly true, but frankly we believe and we now believe after this cross examination that we can prove that he will need to have two trucks in order to take care of his interstate freight.

Chairman Matthews: Mr. Bliss, would that affect the question of convenience and necessity, the application is not for just running one truck a day.

Mr. Bliss: There has been a statement made on direct examination, I believe, by both witnesses, to the effect that it will not cost them much, if anything, to handle this freight. Now, without admitting that that substantiates their application, we seek the question that they won't incur any additional out-of-pocket expense—we believe a little more tonnage will show it will be necessary for them to have two additional trucks.

Mr. Oven: If we do, we have got business enough to pay for it.

Mr. Bliss: That doesn't change the proposition.

[fol. 1446] Q. Mr. Simms, can you furnish us, for the month of January, 1938, the same material as shown in sheets 1 to 4 of your Exhibit 2, broken down by truck trips and cars?

A. Yes.

Q. Showing the weight handled on each truck trip and loaded in each LCL car?

A. Yes.

Chairman Matthews: You can furnish that within twenty days?

The Witness: I assume I can.

Chairman Matthews: Will you supply that to the Examiner and——

Examiner Yardley: Send it to Judge Oven and he will forward it on—see that all parties get a copy.

Mr. Oven: That will require four copies?

Examiner Yardley: Also the Examiner wants a copy?

Mr. Oven: I am going to give you the fourth, Mr. Walker makes the third man, better make six copies then.

(Above information to be furnished within twenty days.)

Q. Do you forward or receive LCL cars from or to any points except Jacksonville?

A. No.

Q. These exhibits then show all of the LCL freight going into and coming out of Fernandina, or is a little freight for intermediate points?

[fol. 1447] A. Not included in those figures.

Q. In addition there is freight to and from the intermediate points?

A. There may be that I have no knowledge of, but not in these figures here.

Q. Does your agency handle billing for any of the intermediate points?

A. No.

Q. Do you have a pickup and delivery truck stationed at Fernandina?

A. Yes.

Q. More than one?

A. We have two trucks in operation, yes.

Q. Besides the line haul truck?

A. We have a line haul truck that operates between Fernandina and Yulee, that line, however, is not involved in this proceeding.

Q. What does the line from Yulee to Fernandina handle?

A. Railway Express stuff and baggage.

Q. It doesn't handle any of the shipments known as freight?

A. No, sir.

Q. Do the line haul trucks do the pickup and delivery in Fernandina?

A. Yes, that is, a portion of it, shippers and receivers do some of their own delivering and pickup.

[fol. 1448] Q. You have no equipment in Fernandina solely devoted to pickup and delivery?

A. No.

Redirect examination.

By Mr. Oven:

Q. Mr. Simms, over what route will this proposed operation be?

A. Direct.

Q. I want the numbers of the routes to identify it in the record.

A. U. S. 17 or State Road 3—I may be wrong on the State Road, from Jacksonville to Yulee and State Road 13 from Yulee to Fernandina.

Q. Along any other routes?

A. No, sir.

Recross examination.

By Mr. Steadman:

Q. What other intermediate points besides Yulee, between Jacksonville and Fernandina?

A. I don't think we handle any at all except Yulee.

Q. At the beginning of your testimony you stated, I believe, that it proved a convenience to you because of the fact that the train didn't get there on schedule, because it had to discharge freight at the intermediate points?

A. I was speaking of the truck line in my first answer, in my second answer there are several stops between Bald-

win and Yulee, however, there is another witness who will [fol. 1449] testify as to that.

Q. Where does Baldwin come into the picture, I thought you said the train operated between Jacksonville and Fernandina?

A. No.

Q. Where?

A. Between Baldwin and Fernandina.

Q. Then you have no rail service from Jacksonville to Fernandina?

A. Yes.

Q. How does it operate?

A. Direct.

Q. From Jacksonville to Fernandina?

A. Yes.

Q. Then Baldwin is not material then?

A. Well, the service—in your first question, Baldwin is material, in other words, the westbound serving Fernandina is operated from Baldwin to Fernandina and return.

Q. Where does this 158 and 157 operate?

A. Between Baldwin and Fernandina, 158 to Fernandina and 157 from Fernanadina.

Q. What is the train from Jacksonville to Fernandina known as—you don't have any train service?

A. No.

Q. Then a shipment that would leave Jacksonville by the Seaboard Air Line, if it went by rail, would have to go by [fol. 1450] Baldwin and transfer and then go out from Baldwin?

A. It wouldn't transfer, but this is the way it would be handled, the car would move by Baldwin.

Q. What particular advantage would it be to you on behalf of the customers that you have there, to have truck service?

A. I am glad you asked me that question. As No. 157 and 158, being local freight trains, the arrival or departure depends largely upon the tonnage handled. No. 158, as I testified before, is due at Fernandina at eight-fifteen a.m., its usual performance is nine-thirty to ten-thirty, and in some instances as late as twelve, depending upon the tonnage handled; No. 157 which is scheduled to leave at eight-forty-five a.m., its departure is dependent upon the volume of business brought into and to be handled at the terminal at Fernandina.

Q. It is supposed to leave at eight-forty-five?
A. Its actual departure is eleven-thirty to twelve-thirty.
Q. Scheduled at eight-forty-five?
A. Yes.
Q. When does it arrive and where?
A. At Fernandina.
Q. I mean when it departs?
A. At Baldwin.
Q. What time?
A. Well, if it left Fernandina at eight-forty-five, then it [fol. 1451] would be over there about eleven-forty-five, it is about three hours.
Q. Handling of carload shipments from Jacksonville to Fernandina—would that be handled—how would that be handled?
A. I would prefer to have Mr. Sauls answer that question.
Q. You are the agent there?
A. Yes sir, but my jurisdiction doesn't extend beyond the yard.
Q. In solicitation of freight you have to advise your customers when and where the delivery would be expected?
A. I could tell them what time it would be expected at Jacksonville——
Q. How would it be handled?
A. LCL out of Fernandina received prior to the departure of 157 on any given day leaves on 157, it is my understanding that the car in which it is loaded is at the receiving warehouse in Jacksonville at the beginning of the business day, the following day.
Q. Overnight service then?
A. Yes.
Q. When it gets here you offer pickup and delivery service at Jacksonville?
A. You will probably want to develop that from Mr. Sauls.
Q. You are familiar with the tariff?
[fol. 1452]. A. The tariff provides for pickup and delivery at Jacksonville.
Q. You could give approximately the same service insofar as a business house is concerned by moving these LCL shipments by rail?
A. No. LCL freight received from Fernandina up to four p.m. is moved by truck intrastate at the present time

and arrives at Jacksonville at five-thirty p.m., by forwarding to final destination, if beyond Jacksonville, that night. If it is in the State of Florida, now if I had an interstate shipment received at Fernandina, after the departure of 157, it would of necessity layover in my warehouse until twelve or the departure of 157 the following day and is in Jacksonville the morning of the second day, the thing to bear in mind is that if this LCL interstate*ment* shipment could leave Fernandina at four p.m. and be in Jacksonville at five-thirty and out of Jacksonville during the night, it would save anywhere from twenty-four to forty-eight hours and in case of a Sunday or holiday as much as seventy-two.

Q. Wouldn't it be possible in that the solution of your problem would be the change in schedule of your trains?

A. I think you had better ask Mr. Sauls that.

Q. Well, your personal experience?

A. You have other things to consider in doing that.

Q. We are asking about schedules, you are trying to con- [fol. 1453] vey the thought that it is essential that this truck service be maintained, it is essential that you have a truck service whereby if you had this schedule you could get the same results, couldn't you, if you had a train leaving there at four it would give you the same thing?

A. No.

Q. Why?

A. For the reason that the car would not be available at the receiving warehouse in Jacksonville until practically eight the next day.

Q. Why?

A. It would be an overnight run from Fernandina, say it leaves at seven or eight, or even at four, the car could not be moved into Jacksonville and spotted at the receiving warehouse in time to handle it that night.

Q. Then, it is a matter of operation, is it not?

A. Economical expedited service.

Q. Then the real thing is this, it is not a source of convenience to the public but a source of convenience to the Seaboard Air Line?

A. I wouldn't say that.

Q. I just stated if you changed the schedule to comply with the schedule that the Seaboard Air Line operates out of Jacksonville, if you could get the same thing as you get by putting on the truck?

[fol. 1454] A. I stated distinctly that if the car left Fernandina that it could not be at the warehouse in Jacksonville, under ordinary operating conditions, the same day it left Fernandina——

Q. When you say ordinary operating conditions, you mean the schedules that are in effect now?

A. Any schedules that might be in effect from a practical railroad standpoint.

Q. How long would it be scheduled moving from Fernandina into Jacksonville?

A. From two to three hours under the best of conditions.

Q. Then it is quite possible by manipulation of schedule, you can effect by rail the same schedule that you can effect by truck now?

A. No.

Q. For what reason?

A. I have just stated my reason, I said I can run a truck from Fernandina to Jacksonville in one and one-half hours, I don't think that is a possibility and I would say it is not, to run a railroad train there, with the cars switched out through the terminal and get it to the warehouse in time for the agent to forward it out that night.

Q. It is just a matter of changing your operation in order to comply with the convenience of moving this freight from Fernandina to Jacksonville?

A. No.

[fol. 1455] Q. Isn't that right?.

A. No.

Mr. Steadman: That is all.

Redirect examination.

By Mr. Oven:

Q. All cars that are spotted are given time?

A. Yes.

Q. And when a train gets in here the engineer cuts off and then a switch engine takes it and puts it at various places?

A. Yes, sir.

Q. And to get it at the warehouse the LCL stuff, it has either got to be unloaded or transferred the next morning?

A. Provided it gets in in the late afternoon or in the night.

Q. You can't run that car carrying that LCL freight

from the depot at Fernandina into a warehouse at Jacksonville?

A. No.

Q. Now, in reference to schedules, other schedules have to be controlled in a railroad system?

A. That is what I meant by my answer awhile ago.

Q. Now, the gentleman asked you something about pickup service in Jacksonville, if freight is consigned to Jacksonville from Fernandina that would be delivered by the pickup and delivery service here?

A. Yes, sir.

Q. That would be an intrastate movement?

A. Yes, sir.

[fol. 1456] Q. Now, if consigned from Fernandina through Jacksonville to points beyond, moving by this truck, there would be no use of a pickup and delivery service here in Jacksonville?

A. Not for that particular shipment.

Q. Or any other interstate shipment?

A. No.

Recross-examination.

By Mr. Steadman:

Q. Have you inquired or have you had any inquiries from anybody in Fernandina that expressed a desire that the Seaboard Air Line put on a truck?

A. They haven't exactly importuned us to put on a truck, but they have said it would be desirable from the standpoint of receiving and hauling the freight.

By Schwartz:

Q. Mr. Simms, this operation from Yulee to Fernandina was commenced after October 15, 1936, wasn't it?

A. From Yulee to Fernandina?

Q. Yes.

A. No.

Q. October 15, 1935—I beg your pardon?

A. That service was originally——

Mr. Oven: That is all in the record now when these operations started.

Mr. Schwartz: I just wanted the exact date—it was after October 15, 1935?

Mr. Oven: That was the operation that the railroad [fol. 1457] commission permitted and then under House Bill 138 service was granted to Jacksonville.

Mr. Schwartz: By your Exhibit 2 you show from November 20 to June 15, 1938?

Mr. Oven: That is the Jacksonville-Fernandina operation.

By Mr. Schwartz:

Q. What I am interested in is from Yulee to Fernandina —that was started after October 15, 1935?

A. I am just a little puzzled by that question, I am not prepared to answer that question definitely.

Q. That operation meets both north and southbound trains at Yulee?

A. Yes, some of them.

Q. And it handles express off those trains and mail and passengers?

A. Yes.

Q. That is interstate express?

A. Yes.

Q. You won't say whether that was commenced before October 15, 1935?

A. My memory doesn't serve me as to the exact date, however, the issuance of the certificate would show it.

Q. If I should state to you that by order No. 795 of the Florida Railroad Commission, Docket 216, under date of October 16, 1935, the Seaboard Air Line was granted an intrastate certificate to render substituted service by truck or [fol. 1458] bus or combination as between Yulee and Fernandina, you would not deny that, would you?

A. I have no information on it.

Q. Do you know whether or not there is an application pending on that particular operation before the Interstate Commerce Commission?

Examiner Yardley: I don't think he is in position to testify as to that, he is the agent at Fernandina, I doubt if he knows the affairs of the Seaboard Air Line.

The Witness: I do not know.

By Mr. Steadman:

Q. How many in the personnel of the agency at Fernandina?

A. Myself and two others.

Q. Just yourself and two others, that makes three in all?

A. Yes, sir.

Q. Does that include the truck drivers and helpers too?

A. Your question was as to the agency?

Q. Yes.

A. No, that doesn't include them.

Q. How many drivers do you have?

A. One on the Jacksonville-Fernandina line and two on the Fernandina-Yulee line.

Q. You mentioned about having two trucks in Fernandina, is there any additional men working there other than the six you have mentioned, or how about the two trucks in Fer-
[fol. 1459] nandina that you included?

A. Yes, three drivers, two drivers on the Fernandina-Yulee line and one on the Jacksonville-Fernandina line, that is three.

Q. That is six altogether?

A. Yes, we have a colored warehouseman.

Q. That is seven, do you have any other help?

A. No, sir.

Q. Just actual labor?

A. Yes.

Q. Then the statement that you made that you had two trucks in Fernandina to make pickup and deliveries, they are not stationed at Fernandina alone for that purpose?

A. No.

Q. Shipments that might originate, say in Waycross, Georgia, that would move into Fernandina, would be delivered by those trucks?

A. In Fernandina?

Q. Yes, if the customer didn't call for it and availed himself of the five cents a hundred rate, that would be delivered——

A. One or the other.

Mr. Kitchen: Before this witness is taken off the stand, I request, in behalf of the protestants, that we be allowed to go to Fernandina and that the records upon which these tabulations are made will be available to one of the protest-
[fol. 1460] ants, to examine and compare with the said tabulation.

Mr. Oven: We object to that, we don't care to have anybody going through our records—we will furnish, under

oath, the testimony so far as the tonnage is concerned, but we can't be——

Mr. Kitchen: Then I renew the motion to strike the testimony and exhibits as given by this witness, as the protestants have not had an opportunity to examine and have been refused this opportunity to cross examine or to see the originals from which the tabulation is made.

Mr. Steadman: I might make this statement, as information, that I found that individual freight bills supplied information as to the cost of operation and if the Board could see fit to consider having the applicant provide something tangible that we could work on, we could file an intelligent brief which would be very helpful.

Chairman Matthews: The renewed motion will be denied.

Mr. Kitchen: Then I move the Board to compel the applicant to allow us to inspect the original records and allow us twenty days within which to make such inspection.

Mr. Oven: Same objection and same offer as before.

Chairman Matthews: That will be denied also.

Who will you have for your next witness?

(Witness excused.)

[fol. 1461] C. H. Sauls was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. Where do you live, Mr. Sauls?

A. Savannah, Georgia.

Q. What position do you hold with the Seaboard Air Line?

A. Division superintendent of the territory known as the South Carolina division.

Q. Does the cover and include the operation as between Jacksonville and Fernandina?

A. Yes, and Baldwin——.

Q. Will you tell us what train schedules are now in effect and truck schedules, as to the intrastate movement operated by the Seaboard Air Line as between Jacksonville and Fernandina?

A. We operate one train leaving Baldwin—so far as a schedule is concerned, known as 158, at six a.m., scheduled

to arrive Fernandina at eight-fifteen; No. 157 scheduled to leave Fernandina at eight-forty-five, to arrive at Baldwin at eleven-forty-five; the truck schedule is to leave Jacksonville at sixty-thirty a.m. and arrives at Fernandina at eight a.m.; to leave Fernandina at four p.m., and arrive Jacksonville at five-thirty p.m.

Q. Have you examined the data prepared by Mr. Simms, offered as applicant's exhibit No. 2, sheets 1, 2, 3, 4 and 5?

A. I have read them, yes.

[fol. 1462] Q. If you have, state in what way will the granting of a certificate to handle interstate commerce on that operation, now being operated between Jacksonville and Fernandina, have upon the public and the railway system?

A. It will enable us to operate less solid cars into Fernandina, it will save money for the railroad and it will enable us to deliver the LCL freight arriving at Fernandina, both intrastate and interstate at the same time, and advance the movement of the interstate inbound delivery, I would say approximately four to five hours.

Q. Now, with reference to the outbound?

A. On the outbound freight it will expedite the movement of the interstate freight twenty-four or more hours for delivery into the station in time to leave on the truck.

Q. Now, will you explain to us, the handling of this freight by truck now moving in interstate commerce and handled by train, how it will be stepped up?

A. It will be worked in the Jacksonville agen-y today, for example, go out on the truck for early delivery in Fernandina, the next morning, or shortly after eight when the agency opens, as against the present operation of moving by car from Jacksonville via Baldwin to Fernandina, arriving Fernandina anywhere from nine-thirty to twelve noon, making an afternoon delivery.

Q. Now that would be a convenience to the public—now, what would be the saving to the company, if any?

[fol. 1463] A. We would make less cars— I figured from the period of November 20 to June 15 we would have saved the making and moving of 167 cars from Jacksonville to Fernandina.

Examiner Yardley: Just to be clear, I am not quite certain about one point, do I understand in the event this certificate is granted that when you have full carloads of

LCL freight that they will be handled by train or by truck?

The Witness: By train if it is more than the truck can handle.

Examiner Yardley: That doesn't answer my question—if you have an entire carload of LCL freight from Jacksonville to Fernandina and you have your usual intrastate truck movement, will that carload be handled by train or truck?

The Witness: By train.

Examiner Yardley: I thought that was what you meant, I just wanted to be positive.

By Mr. Oven:

Q. Now, back to my question, in dollars and cents, how much would that saving be?

A. Approximately $4.63 per car and for the 167 cars it would figure $773.21.

Q. Is the movement of LCL freight into and out of Fernandina light or heavy?

A. Comparatively speaking it is light.

Q. Now, with reference to freight movements interstate from Fernandina to Jacksonville, how long does it take that to move?

[fol. 1464] A. Leaving Fernandina on 157, cars are taken into Baldwin where they are then handled from Baldwin to Jacksonville, placed at the warehouse for working the following day; under the proposed operation the same freight would move from Fernandina to Jacksonville in the afternoon in time for loading in the regular setup of outbound merchandise, LCL cars, from the Jacksonville warehouse the same night.

Q. Now, Mr. Sauls, in this operation, for the benefit of the record, to clear up some questions that have been propounded to Mr. Simms, describe minutely the movement of that train from Fernandina until that carload gets to Jacksonville?

A. We have a separate seniority district, the line from Baldwin to Fernandina being one of our oldest lines, it is necessary for us to operate the service between Baldwin and Fernandina instead of Jacksonville by Yulee to Fernandina, this situation is covered by labor agreement which we cannot abrogate, a carload from Fernandina on 157 would therefore move into Baldwin in the afternoon, be

switched into a Jacksonville classification and moved in during the night by a crew on what is known as the North Florida division, operating from Wildwood or some other terminal into Jacksonville. After the arrival in the Jacksonville yard it is then necessary, under the law, that a very careful inspection be made by car inspectors and after that is done the switch engine is then used to switch the car to the various terminal destinations, including the setup for [fol. 1465] the warehouse, and is placed at the warehouse sometime during the night for working the following morning when the agency opens.

Q. How far is it from the yard to the warehouse in Jacksonville?

A. That is not in my jurisdiction, but I would say approximately two miles from West Jacksonville yard to the freight house.

Q. Now after that freight goes to the warehouse, when does it move out?

A. The following night with the regular out of merchandise cars.

Q. Then, if that same freight moved by truck it would leave out the same night it left Fernandina?

A. Yes, if delivered in Fernandina in time to make the schedule of the truck.

Q. Now, I understand you have filed, very recently, with the Interstate Commerce Commission, and also with the Florida Railroad Commission, no action being taken on either one yet, an amended schedule whereby you propose to leave Fernandina at three p. m., arriving Yulee at three-thirty, leaving Yulee at three-thirty-five, arriving at Jacksonville at four-thirty; leaving Jacksonville at five, arriving Yulee five-forty-five, leaving Yulee five-fifty, arriving Fernandina six-thirty; that is by truck; will you tell me what [fol. 1466] advantage that schedule will give over the present schedule now in operation?

A. The idea in making that change was not from a freight standpoint, but that of a labor standpoint, in order to avoid the driver on this particular truck having longer hours with a definite layover in Fernandina—in other words, simply to shorten the hours of the day at the driver's terminal.

Q. Have you anything else you would like to state in the record, Mr. Sauls, as to the convenience and necessity of this operation?

A. I think that was explained by Mr. Simms, the outbound movement would be very materially expedited by anywhere from twenty-four to forty-eight hours and sometimes seventy-two hours in its movement as compared with the present train operation.

Q. The train that goes in there now has both carload and LCL business?

A. Yes.

Q. Which predominates?

A. Carload.

Q. Can you give us any idea of the proportion of carload business handled in there?

A. That would be simply a guess, without checking the record, but the tonnage into Fernandina would run anywhere from 500 to 3,500 pounds, practically all of which is carload business, per train average.

[fol. 1467] Q. Do you think the LCL business now moving in there by train because of the fact that it is moved interstate and you can't move it by truck, would ever amount, except possibly in one or two exceptional cases, to more than a good load for the truck making one trip a day?

A. Yes, I think in certain days of the week it would; this train operating from Baldwin to Fernandina also serves Bryceville, Callahan and Italia, which makes it necessary on certain days a week to run a car anyway and that car is filled out, of course, if the tonnage is available with Fernandina freight, it is carried on through to Fernandina.

Q. And the working of these other small places delays the arrival in Fernandina?

A. Various things, they will delay the arrival, the connections coming into Baldwin may set the train back as the predominating tonnage at the present time is pulpwood coming in from the Florida territory.

Q. None of that would ever move in a truck?

A. No.

Mr. Steadman: We object to that.

Chairman Matthews: Objection overruled.

Gentlemen, it is now five o'clock, we will adjourn until nine tomorrow morning.

(Whereupon, at 5 o'clock p. m., the hearing was adjourned until 9 o'clock a. m., June 23, 1938.)

[fol. 1468] Before the Interstate Commerce Commission

Docket No. MC-86687 (Sub-No. 18)

In the Matter of the Application of *the Application of* Seaboard Air Line Railway Co. (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a Corporation, of Seaboard Air Line Railway Building, Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of Florida, between Jacksonville and Fernandina, Florida, via Yulee, Florida

Hotel Mayflower, Jacksonville, Florida,
June 23, 1938, 9 o'clock a. m.

Before Joint Board No. 205

Present: Hon. Eugene S. Matthews, Chairman, Florida Railroad Commission; Richard Yardley, Examiner, Interstate Commerce Commission.

Met pursuant to adjournment.

APPEARANCES:

As heretofore noted.

[fol. 1469] PROCEEDINGS

Chairman Matthews: All right, gentlemen, are you ready to proceed?

C. H. SAULS having been previously sworn, resumed the stand and testified further as follows:

Direct examination.

By Mr. Oven:

Q. Mr. Sauls, with reference to the LCL freight that is now handled into Fernandina by train and which is moving in interstate commerce, state whether or not that is delivered to the Seaboard Air Line at other agencies or by its connecting carriers for delivery into Fernandina?

A. It is delivered to us by other agencies on the Seaboard Air Line and will come to us through the various inter-

change connection and other railroads over the entire system.

Q. Then, as a matter of fact, regardless of whether or not the Seaboard Air Line was permitted to move that by truck from Jacksonville to Fernandina, it would still be the Seaboard Air Line's freight and delivered into Fernandina at some time or other by Seaboard Air Line?

A. Yes.

Q. Would the reverse be true as to outbound shipments?

A. Yes.

Q. Now assuming for the sake of argument, that a ship-
[fol. 1470] ment of groceries or dry goods was made from Valdosta, Georgia, by the K. & L. Transportation Company, consigned to Fernandina, would that in any way be turned over to the Seaboard Air Line for delivery into Fernandina, or would it move in there by truck?

A. By truck.

Q. In short, the truck lines interchange with each other and the railroads interchange with each other?

A. Yes.

Q. Can you state, for the benefit of the record, how many truck lines operate into Fernandina outside of what the Seaboard Air Line is operating?

A. I don't know, I am not familiar with that operation.

Cross-examination.

By Mr. Bliss:

Q. Mr. Sauls, you mentioned the figure of 167 cars?

A. That is correct.

Q. For what period was that?

A. For the period of November 20 to June 15.

Q. How do you arrive at that figure?

A. From checking the records as to what we did handle and what we could have handled on the truck, that, of course, is a figure that we estimate to be correct and believe it to be approximately correct.

Q. Was your check made independent of the check of Mr. Simms?

[fol. 1471] A. Yes, that was checked from the 44 reports in the office.

Q. What is the 44 reports?

A. Railroad report tonnage handled in merchandise cars.

Q. And you believe that you could have eliminated the use of 167 cars?

A. Yes.

Q. I presume those would have been cars which carried no shipments for Bryceville, Callahan, and Italia, or intermediate points?

A. Yes.

Q. Did you check the truck trips on the same day that those cars moved?

A. Yes.

Q. Did you find that the trucks could have handled the tonnage?

A. That was our figures, yes.

Q. Did you find that you would have had to get more than 175 truck trips?

A. No, we didn't figure on making any trips except the one trip with truck service.

Q. Do you have your computations for the month of January, 1938?

A. I have the total number of cars that were operated, I didn't bring the work sheets.

Q. Could you furnish copies of those work sheets for that [fol. 1472] month, it being the same month?

Mr. Oven: We agreed to file a statement for January yesterday.

Mr. Bliss: This is an independent survey by another official which, while it is not presented in as much detail originally, still appears to us to be based on sounder statistical methods than the first exhibit, and I am possibly doing you a favor in requesting this information—I think it should be requested, however.

Mr. Oven: We have prepared a statement showing the LCL freight handled in intrastate commerce by days for the month of January by truck and we also prepared a similar statement showing the interstate shipments handled by train for that month and that was the month selected.

Mr. Bliss: I see no reason why you should have any objection to Mr. Sauls copying his work sheets.

Mr. Oven: We are simply doing the same thing over, it all comes from the same records.

Examiner Yardley: Would you mind showing that statement to Mr. Bliss?

Mr. Oven: I was going to hand it in when he finished cross examining.

Mr. Bliss: Our purpose for asking for any of this information is, of course, to check the implication as to little, if any, additional cost. I think we have been rather reasonable [fol. 1473] in trying to suggest——

Chairman Matthews: Mr. Bliss, don't you think that is rather incidental in this case any way as to the saving——

Mr. Bliss: Of course, we don't know what finding will be made with respect to that feature, we are anxious to prevent, if the facts will warrant, the finding that there will be any additional cost because we don't believe that to be the state of affairs.

Examiner Yardley: We all realize there will be some additional cost, at least, when you say no additional, of course, that is—for instance, here on the 15th day of January they had a load of 17,408 pounds of freight to Fernandina—now they couldn't have gotten a great deal more on that truck, that is almost a load, if not a load, so we know it will be necessary, if they had any shipments whatever in interstate commerce, it would be necessary to run another truck and go back for another load.

Mr. Steadman: Suppose he did have 17,408 pounds on that day, if that was tenth or twelfth class freight, the cost would be the same, the revenue derived would not offset the cost of handling it.

Examiner Yardley: It will average up the same as with your line, the Seaboard Air Line.

Mr. Steadman: We haven't found it to average up and for that reason we found it necessary to restrict our tariff [fol. 1474] so we won't haul any higher than seventh class. If the thing would average up we would want to protect all classes of freight. We find it very material in the cost of operation to haul low class freight.

Examiner Yardley: I don't want to get into any arguments with you on that, Mr. Steadman. You might have some personal views on the matter.

Mr. Bliss: I would like to state that——

Examiner Yardley: Just a minute, Mr. Bliss.

Chairman Matthews: I think the applicant will not be required to submit any further breakdown of this movement.

By Mr. Bliss:

Q. What do you estimate is the cost per mile of operating trucks?

A. You mean trucks or this particular truck?

Q. This particular truck, the actual cost of operating?

A. This truck, without any overhead figures?

Examiner Yardley: It won't be of much value then.

The Witness: I mean the actual expenses.

Examiner Yardley: All right.

The Witness: The actual expense of operating that particular truck for a period of five months, January through May, as taken from the Auditor's figures, totaled $1,463.64, or an average cost per mile of 16.82 cents.

Q. That is 16.82 cents per mile?

A. Yes.

[fol. 1475] Q. Do you happen to recall how often you have a shipment for these intermediate points?

A. Well, it depends largely on when you move them, practically speaking there is nothing for those points.

Q. Is it your proposal to delay shipments to those points?

A. No.

Q. In other words, if you have a 100 pound shipment for Italia, would you run a car around by Baldwin even though all of your Fernandina freight was moving by train?

A. We would move the freight.

Q. What provision do you make for shipments being forwarded from Bryceville, Italia, and Callahan?

A. We move them by train.

Q. How are you going to know that—suppose the shipper at Italia has a case of honey to ship into New York?

A. If there is any honey in there, I haven't seen it.

Q. Well, take anything?

A. I don't get what you are driving at.

Q. How will you know so as to have a car on that train returning from Fernandina to Italia that he can load that shipment into?

A. Just the same as any other local station or flag station on the railroad.

Examiner Yardley: Do I understand that this application does not cover intermediate points?

The Witness: It does not.

[fol. 1476] Examiner Yardley: The only points touched by the highway and rail line?

The Witness: This territory he is questioning me about is between Yulee and Baldwin.

Mr. Bliss: My question is directed to cost; I am trying to see how he can avoid having an LCL car on trains 157 and 158 every day any way, or else damage the service being given to these intermediate point.

The Witness: On train 157, moving from Fernandina to Baldwin, there are always more loads going into Fernandina than there is loads moving out, consequently the train always has empty cars moving back that can be utilized for any purpose necessary.

Q. Those may be cars that can be used for loading package freight?

A. Absolutely.

Q. And not pulp cars?

A. We never load package freight in anything except in closed cars.

Q. If the Motor Carrier, now operating into Fernandina, with whom K. & L. would interchange, in one of Mr. Oven's questions, were to have to stop operations, would you then interchange with K. & L. and other Motor Carriers?

A. I would say not, however, I am not competent to answer that question. It is really for the executives to answer?

[fol. 1477] Q. Do you anticipate an increase in tonnage as a result of this alleged improvement in service?

A. I haven't considered it, we are now getting the business and trying to expedite it.

Q. You testified on direct examination as to where this traffic might be received at other agencies of the Seaboard Air Line, might any of it be received on the other motor lines of the Seaboard Air Line?

A. No, sir, not unless taken to the station and rebilled as a local shipment.

Q. Might some of it be received from the other motor lines of the Seaboard Air Line?

A. Not to be handled by the Seaboard Air Line.

Examiner Yardley: In the event the other certificates are granted, if you don't mean that, I don't know what you mean.

Mr. Bliss: Including the other certificates applied for and the certificates applied for under the Grandfather application, in the event they are granted.

The Witness: It is possible that if it was delivered to any point in Florida at our station, where similar truck lines operate, it might move into Jacksonville on that truck and through to Fernandina on ours.

Q. You spoke of the present train schedules from Jacksonville or Baldwin to Fernandina as being very seldom run [fol. 1478] on time?

A. That is true.

Q. You seemed to assume that the motor trucks would always make their schedule?

A. My experience is they do, as a rule.

Q. Is it your experience that in general Motor Carrier transportation, they are more reliable as to making schedules?

A. I am not familiar with the Motor Carriers and their performance or what they do, I am only familiar with our operations and it is a general fact that any freight train operating on a branch line doing local work will not run on a paper schedule, such schedules are made for train dispatching and other operating purposes.

Q. But you do feel your Motor Trucks can run on paper schedules?

A. They do, as a rule.

Q. Isn't it possible, in your terminal operation, to favor one schedule as against another by making swifter transfers?

A. That is done in the case of perishable freight.

Q. Can it not be done as between any two schedules?

A. I don't get your question there as to what you mean.

Q. Isn't it possible to favor one schedule as against another by giving one better terminal service?

A. That is done, as I stated above, but it has to be [fol. 1479] governed by the class of freight.

Q. At what intermediate points between Jacksonville and Fernandina, via Baldwin, do you have occasion to switch cars at nights in the industries?

A. We have no night service, we only have one round trip a day and it is daylight service.

Q. If that daylight service were turned into night service, and I believe a previous witness testified that it would be

convenient, I would like to know at what intermediate point you have that problem of switching to industry?

A. In the first place it would not be convenient to turn the service into a night service on account of the connections in the freight moving, that this train carries into Fernandina, and if it was made a night train it would switch identically the point that it switches in the day time, any point that is necessary.

Q. Then, do I understand that you do not propose to change the schedules of trains 157 and 158?

A. In no respect whatever.

By Mr. Kitchen:

Q. Yesterday, didn't you state that due to certain agreements with the Brotherhood that it was necessary, by virtue of seniority, for this freight to be shipped by way of Baldwin preferably than direct from Jacksonville to Yulee and Fernandina?

A. I made that statement—I also stated that due to the [fol. 1480] connections and nature of the business out of Fernandina it was also necessary to rush this train out of Baldwin.

Q. Would it be necessary for your trucks to go by way of Baldwin?

A. No.

Q. Will you tell me why it is necessary for a train and not necessary for a truck to take that circuitous route?

A. The truck would go the direct route because there are no stations to work; on the other line the road does not parallel the railroad. The reason for the trains to be operated out of Baldwin is due to the fact that the majority of the tonnage handled on these trains is phosphate rock, originating in Florida points, pulp wood, and other freight that also originates at Florida points, Baldwin being the terminal.

Q. Just to further clarify my understanding, as to the proposed establishing of truck service, is it for the purpose of transporting less than carload lots from Jacksonville to Fernandina, in interstate shipments, we will say, and direct route?

A. It is for the purpose of expediting the freight that originates over the entire country destined to Fernandina.

Q. The freight would be transported by truck, that

would naturally lessen the interstate freight as transported by rail, would it not?

A. To that extent, yes, from Jacksonville to Fernandina.

[fol. 1481] Q. Did you hear the testimony of Mr. Simms, your agent?

A. I think I heard practically all of it.

Q. His statement, if I am correct, I think it was to the effect that the average car contained a volume of gross weight of 25,000 pounds, would you concur in such a statement?

A. I didn't hear him make the statement that it would do that, I think his statement was that usually they ran around 5 tons, and some times less than that, depending upon what the shipment is; in many cases that we have, a large piece of machinery coming from the factory, for instance, destined to Fernandina, arriving in Jacksonville in a loaded merchandise car, that it is properly braced and hard to move, that particular piece will be permitted to go on without transfer.

Q. Freight of a different nature would be taken by truck?

A. It would if the one truck would handle it, otherwise by freight.

Q. If the freight was offered and the public demand was made, would you not increase the trucks operated?

A. We do not anticipate—I would say unqualifiedly, no, under present conditions.

Q. Would not the placing of trucks in service between Jacksonville and Fernandina for handling of less than carload freight, interstate shipments, have a tendency or leeway, in which your Company would withdraw from the agreement made by the union without abrogating such agreement?

A. No, sir, it would have absolutely nothing whatever to [fol. 1482] do with the contract relationship between the railroad and organizations.

Q. By the way, does the American Railway Express Agency have an office and does it operate into Fernandina?

A. It has an office there, it operates over the Seaboard Air Line, that is the Railway Express Agency; there is no American Railway Express.

Q. How does that operate—an interstate shipment com-

ing into Jacksonville, how would it be taken into Fernandina?

A. By train and bus.

Q. By train and bus?

A. Yes, sir.

Q. What bus?

A. Seaboard bus.

Q. When did you start transporting express by Seaboard bus?

A. I don't remember the date, I can get it for you and mail it to you if it is material.

Q. It is very material, and I insist on having it—will you, Mr. Chairman, please require the applicant to conform with the request within a stated number of days?

Mr. Oven: That is already in the record.

Chairman Matthews: There was some testimony here yesterday regarding that, Mr. Kitchen, the testimony showed that the Seaboard Air Line originally contracted with McJunkin for the handling of that express to Yulee, [fol. 1483] I believe it was, and then later that contract having terminated, they put on service for themselves, and I think the dates were given in that.

The Witness: I would have to check the records to find that, I think it was two or three years ago.

Mr. Kitchen: Mr. Chairman, under order 795, Docket 216, by the authority of the Railroad Commission it does not authorize any such operations from Jacksonville to Fernandina for the transportation of interstate shipments of any kind nor for intrastate shipments, it wouldn't as far that matter, the order of the Commission——

Examiner Yardley: What is the date?

Mr. Kitchen: The 16th day of October, 1935.

Examiner Yardley: For your purposes this service started subsequent to that time.

The Witness: It started by contract between Yulee and Fernandina in 1931, that is before I came to this territory, then we cancelled the contract with McJunkin and started to handling it ourselves, and it has no connection between Jacksonville and Fernandina except by train to Yulee.

Examiner Yardley: But I meant didn't you start handling this express by bus subsequent to the date of this order?

The Witness: Yes.

Examiner Yardley: Isn't that satisfactory?

Mr. Steadman: Yes.

Mr. Oven: Between Fernandina and Yulee, not Jacksonville.

[fol. 1484] Mr. Steadman: Yes.

Mr. Kitchen: And it was started by virtue of the contract with McJunkin?

Examiner Yardley: It is in the record now.

Mr. Kitchen: Still, Mr. Examiner, I want to find the legality of the operation that is heretofore stated by the witness.

Examiner Yardley: We have no evidence whatsoever as to express thus far.

Mr. Kitchen: I think that an issue as to the legality and the——

Examiner Yardley: There is no claim as to the Grandfather right.

Mr. Kitchen: Certainly it is applicable to the fitness of the applicant.

Examiner Yardley: Would it satisfy you if I made a notation of this matter and referred it to the Interstate Commerce Commission?

Mr. Kitchen: Yes.

By Mr. Steadman:

Q. In giving this train schedule, I understood you to say it left at 6 a. m. and arrived in Fernandina at 8:15 a. m.?

A. No, sir, I said it was scheduled to leave at 6 p. m. and to arrive at Fernandina at 8:15 a. m.

Q. Well, assuming that under ordinary conditions that [fol. 1485] would be the way it would move?

A. No, sir, I wouldn't assume that because it is not correct, the schedule is made for——

Q. If a shipment leaves Jacksonville by train, LCL shipment, what time would it get into Fernandina?

A. Any where from 9 in the morning until 12 noon.

Q. That would be a shipment that would be picked up the previous day in Jacksonville?

A. That is right.

Q. Then I gather from that that in so far as the movements from Jacksonville are concerned that you can give as good service by train as you can by truck?

A. No, sir, a truck movement would be delivered in the early morning, whereas the movement by train would be delivered at noon or afternoon.

Q. A matter of a couple of hour-?

A. 8:30 to 12:30 at noon, maybe more than that.

Q. Of course, if you have some trouble with your truck, it is subject to delay too?

A. So far we haven't had that.

Q. As I see then the principal interest that you have is to expedite your shipments from Fernandina to Jacksonville so that they will catch the train out of Jacksonville going to the different territories?

A. That and the inbound shipments for early delivery, of [fol. 1486] course when the truck handles intrastate shipments that freight is delivered then when the train gets in; you have got to cover the same territory.

Q. The point I was trying to get in, so far as your schedules are concerned, your principal concern now is to get your freight originating at Fernadina, going in interstate commerce or intrastate commerce, over to Jacksonville in time to catch the schedules out of Jacksonville?

A. The intrastate makes the schedule, we are interested both ways.

Q. As I understand now, you have permission and authority to operate in interstate commerce *commission* between Fernandina and Yulee?

A. That is true, but I think that authority covers express and mail service—I am not sure about it, that is all we handle.

Q. What is the difference between express and LCL freight?

A. I couldn't answer that, that is a question for the Commission to answer. They issue the authorities.

Q. Is there any reason, Mr. Sauls, that you know of, why you couldn't move freight originating at Fernandina to Yulee and put it on one of your southbound trains into Jacksonville?

A. I don't have that kind of service.

Q. You don't have any trains coming in there, from the North, from Savannah, for example, that hauls this LCL freight?

[fol. 1487] A. Not at night, no, and if we did the situation would be the same because the train leaves Fernandina at the same time regardless.

Q. I wasn't speaking about train service at Fernandina, I asked the question about your truck movement from Fernandina to Yulee?

A. No, we don't have any local service at night.

Q. Didn't I understand you—you heard Mr. Simms' testimony, didn't I understand him to say he had a truck operating between Yulee and Fernandina?

A. Yes.

Q. That is what I thought—then there is no reason why that they couldn't handle those LCL shipments?

A. There wouldn't be any use to handle it from Fernandina to Yulee and let it lay over there, you would be handling your shipments twice as against one time direct.

Q. Are you familiar with the articles of the contract between the Railway Express and the Seaboard Air Line?

A. No, I haven't those figures with me.

Q. I wasn't interested in the compensation, but the arrangements under which you handled it; in other words, is there any reason why you couldn't, because of the small amount of tonnage as evidenced by your figures, that you supply in Exhibit 2, as to why you couldn't haul that by truck and put it on one of the southbound passenger trains?

[fol. 1488] A. We cannot handle freight in passenger service. When we do it becomes a freight train under our arrangement.

Q. Do you have immediate knowledge as to your schedule southbound from Jacksonville?

A. No, I don't have the schedules south of Jacksonville because I don't have that territory and have nothing to do with it.

Q. Then you have no knowledge of that schedule, you wouldn't know whether the freight originating at Fernandina brought over here by truck would be expedited——

A. I know when the merchandise cars go out—you spoke of all trains.

Q. We are dealing with freight and I don't see what the schedule of the trains has to do with it?

A. We were dealing with passenger trains a moment before that, through Yulee.

Q. I would like to know, the merchandise cars that originate at Jacksonville move South, North and West, are you faimil-ar with those schedules?

A. Yes, the southbound cars leave Jacksonville at night and go to Miami, Tampa, St. Petersburg, and other places over night.

Q. You don't have any knowledge about the time they leave?

A. The southbound train leaves, as I recall, at 8:15 or 9 at night.

Q. And the Seaboard Air Line West?

[fol. 1489] A. That is all southbound schedule, we have no westbound trains, that train makes connection at Baldwin for the West.

Q. Then any freight that might originate in Fernandina going to New Orleans or Pensacola, Mobile, would have to lay over here until the next morning any way?

A. No, it would go out that night if it came in early enough to load.

Q. On what train?

A. At 8:15 or 9 o'clock.

Q. Going where?

A. All points South connecting at Baldwin for Tallahassee.

Q. And that train going to Tallahassee originates where?

A. I think that crew starts in Baldwin, it may originate here, this is the large terminal and the breaking point for Florida and Western Territory.

Q. Then that would have to be transferred again at Baldwin?

A. No, switched from one train to another, to be classified out of Jacksonville for the West.

Q. How about your northbound schedule?

A. There are only perishable trains leaving here at noon.

Q. Then your service from Fernandina by truck would be of no particular value?

A. It would save, under the present operations, 24 hours delay.

Q. How do you account for a 24 hour delay?

[fol. 1490] A. If your freight was delivered into Fernandina after the train leaves that train does not get in here in time for the connection.

Q. On the perishable schedule, you move all types of freight?

A. High class freight or merchandise.

Q. Do you happen to have made a survey of the quantity of high class freight that you speak of that originates in Fernandina?

A. No, I was talking about what the train moves.

Q. Which train?

A. The one that we designated as a perishable train.

Q. What quantity of this high class freight originates in Fernandina?

A. Any LCL freight is considered high class freight.

Q. Regardless of its revenue?

A. It would have to be because all classes are loaded in the same car.

Q. Your train leaving for the North is at 12 noon?

A. Yes.

Q. And the shipments that may come in by truck would get in here, as I understand it, at 5:30?

A. Yes.

Q. That means that would be an 18 hour lay-over here?

A. Yes.

Q. Your train—your schedule to Baldwin, what time [fol. 1491] would it get into Jacksonville?

A. Around 3 in the morning.

Q. If it got in here at 3 in the morning, what would be the particular advantage in having it on the truck?

A. There would be none, if the business was delivered in Fernandina in time to move on the truck.

Q. Then it is a matter of schedule to Fernandina—in other words, the population of Fernandina——

A. No.

Q. Your train is scheduled to leave there at 8:45?

A. Yes.

Q. They know that that train leaves there at 8:45?

A. Yes.

Q. And if they have any shipments, they are going to get them down there?

A. It is according to when they make up their minds.

Q. You have found by your survey that there is a large amount of orders going into Fernandina?

A. I didn't say I made a survey.

Q. Well, leaving the survey out, would you find that there are a large number of orders going into there?

Examiner Yardley: That is shown by the statement of tonnage moving in and out.

Mr. Steadman: Mr. Examiner, he is attempting to put into the record the fact that it is necessary that this truck [fol. 1492] schedule be put between Fernandina and Jacksonville in order to expedite freight, and the schedules he has furnished don't substantiate that.

Examiner Yardley: It is all in the record, you can argue that then.

Judge Oven, I notice your application covers express, I assume you will give us some evidence on that matter.

Mr. Oven: I can't furnish any figures because I haven't been able to handle it, the comparison will not jibe for this reason. The Railway Express moves by passenger train, now to Yulee, thence by this bus from Yulee to Fernandina, now so far as Interstate business goes it has all been handled that way, and the intrastate business may have been handled on the truck to some extent, but ordinarily the express would go to Yulee; now with our present truck service, by passenger train, this gives us two schedules a day as compared with one a day by truck. We might possibly want the authority to handle a little on this truck but in the main the freight proposition is the main one.

Examiner Yardley: I take it then that the record thus far shows no reason for granting a certificate for the handling of express.

Mr. Oven: I will admit it shows no necessity for it up to this time.

Mr. Bliss: I am willing to eliminate that if we can. I [fol. 1493] can't show any difference from protestant's point of view.

Mr. Oven: Mr. Sauls may be able to better explain that.

Examiner Yardley: All I wanted was to bring that to your attention.

By Mr. Steadman:

Q. You have truckage from Jacksonville to Fernandina direct?

A. Yes, we have truckage from Jacksonville to Savannah that connects with the Fernandina branch line.

Q. There was a time when you operated trains 21 and 22 over there, I don't recall the numbers, but you did operate them?

A. Not since I have been in this territory.

Q. If I told you you did, you couldn't deny it?

A. No, sir, and not necessarily except the figures either, I am not familiar with them.

Q. Is there any reason why you couldn't operate a train between Jacksonville and Fernandina now?

A. No, because complications with the organization.

Q. What organization?

A. The engineers and firemen specifically.

Q. What do you mean by complifications?

A. I mean under the contract and agreement of seniority with the engineers of the north Florida division, they have seniority and the South Carolina division engineers and firemen have no rights on that line; neither does the north Florida engineers have rights between Jacksonville and Yulee.

Q. Of course, not having before me contracts, I will have [fol. 1494] to ask the question that I asked before, that is, is there any arrangement that can be made in the event that it would prove a convenience to the Seaboard Air Line to supplement the agreement with the Brotherhood to affect the schedule between Fernandina and Jacksonville?

A. If any arrangements were made it would have to be done through negotiations with the two train service organizations but the natural operation would not make such a schedule practical.

Q. But if it was a practical operation, do you have reasons to believe that such negotiations could be made?

A. I have no reason to think any negotiations would be made under the present labor situation.

Redirect examination.

By Mr. Oven:

Q. You stated, on cross-examination, I believe, that the bulk of the business handled by these trains from Baldwin to Fernandina, they are phosphate rock and pulp wood?

A. Yes.

Q. From what section does the phosphate come?

A. I think all of it comes from around South Florida.

Q. The pulp wood comes from all this territory too?

A. From the territory between Baldwin and Tallahassee and down on the branch lines in South Florida.

Q. Now, the Seaboard Air Line is so constructed that its lines from South Florida run into Baldwin, and thence [fol. 1495] into Jacksonville?

A. Yes.

Q. And the old line on which it comes into Baldwin comes straight across over to Fernandina?

A. Yes.

Q. Then, if the train was operated from Jacksonville directly North to Fernandina, it would mean the handling of all of that heavy stuff, such as phosphate and pulp wood, from Baldwin into Jacksonville yards, then out North on the main line toward Savannah into Fernandina?

A. Yes.

Q. Would that be practical from a railroad operating standpoint?

A. It could be done; it would be a very un-economical operation.

Q. As a matter of fact, Baldwin lies approximately west of Jacksonville?

A. Generally speaking, yes.

Q. And Fernandina lies approximately North?

A. Yes.

Q. Then, there is a line of rail of the Seaboard Air Line from Baldwin direct to Fernandina by Yulee?

A. Yes.

Q. And a line of rail from Baldwin to Jacksonville?

A. Yes.

[fol. 1496] Q. And from Jacksonville up to Yulee?

A. Yes.

Q. Where it crosses the old Baldwin-Fernandina line?

A. Yes.

Q. Can you tell the distance from Jacksonville to Baldwin?

A. Approximately 18 miles, I haven't got the exact figures, but it is 15 or 18 miles.

Q. Well, what is the distance from Baldwin to Fernandina?

A. The distance from Baldwin to Fernandina is 47.3 miles.

Q. From Jacksonville to Yulee, on the main line?

A. From Jacksonville to Yulee is 23½ miles.

Q. From Yulee to Fernandina, now again on the Baldwin-Fernandina line?

A. 12.1 miles.

Q. Now there are certain intermediate points served by this Baldwin-Fernandina line that will not be served by a truck line?

A. Yes.

Q. They are what?

A. Bryceville, Callahan, and Italia.

Q. They are not on the highway?

A. No, sir.

Q. Now, with reference to this train operation, there is no intention on your part, or the management's part, to discontinue the freight train to Fernandina?

[fol. 1497] A. No, that is the only train we operate that serves points between Baldwin and Fernandina.

Q. You say on one day you had 17,400 odd pounds moving to Fernandina and that would have been practically a full truckload, and had you had a large interstate shipment of twelfth class commodity, you would have had to put on another truck to—could not that have been moved by train?

A. It would have been.

Q. With reference to Exhibit that has been furnished showing business intrastate, business handled by truck during the month of January; state whether or not that was an abnormal month or was it? If it was, state why?

A. Because of the fact that the new paper mill, the Ranier Corporation was building their plant at that point and getting in a lot of machinery, etc. for their plant.

Q. Now the business of the Railway Express Company moves by passenger train, doesn't it, where one is operated?

A. Yes.

Q. And it doesn't move by freight?

A. No.

Q. Now, an illustration was made here with reference to a shipment being delivered to the truck line of the Seaboard Air Line brought into Jacksonville and then possibly being delivered to the truck line of the Seaboard Air Line between [fol. 1498] Jacksonville Fernandina, if that was delivered in Florida and brought into Jacksonville, that would be an intrastate shipment?

A. Yes.

Q. Assuming, for the sake of argument——

Mr. Kitchen: I object to the line of questioning, it calls for a conclusion on the part of the witness.

Q. Assuming that the shipment was delivered to the truck line of the Seaboard Air Line in another State and hauled to Jacksonville and then delivered to this Fernandina-Jacksonville truck line, the shipment would be delivered at the station of the Seaboard Air Line of that other State?

A. Yes.

Q. And it would be railway freight just the same?
A. Yes.

Recross-examination.

By Mr. Steadman:

Q. Didn't you mention the figure of 16.82 as a truck mile cost, less the overhead?
A. On this particular truck?
Q. Operating between Jacksonville and Fernandina?
A. Yes.
Q. Did you happen to have available your actual truck mile cost?
A. On this truck I do; it is 16.82.
Q. I mean including the overhead?
A. No, I haven't figured anything of that kind on it.
Q. In arriving at this 16.82, would it be too much trouble [fol. 1499] to you to outline the figures that you used in arriving at that figure?
A. I would be glad to give that to you—gasoline $266.22, lubricants $25.25, tires $35.00, repairs $149.87, truck driver $551.00, other labor $23.46.
Q. You have a helper on the truck?
A. Yes. License prorata $111.50, insurance $88.00, taxes $88.34.
Q. What do you mean by taxes?
A. The prorata of the taxes on the truck. We pay the Commission, that is not the mileage tax. Depreciation $125.00, total $1,463.64, cost per month $292.73.
Q. You haven't figured your mileage tax in there?
A. No, that will run about $45 or $50 a month.
Q. About a cent a mile?
A. Yes.
Q. You haven't considered in that figure the cost, the prorata cost of the agent's time and his personnel at both places, Jacksonville, Fernandina and Yulee?
A. No, for the reason they would be handling this business if it was in cars and we would have the same forces there.
Q. In order to get an accurate cost of the truck mile you would have to consider that?
A. I wouldn't think so, I wouldn't reduce any force except the driver, except the helper, if it was taken off; in other

[fol. 1500] words, the records that is kept by the agents are identically the same on freight moved by truck or train.

Q. Then on the cost of the truck line, such as legal questions that might come up in this hearing, the cost of that wouldn't be prorated on the truck line's expense?

A. Not by me, no.

Q. Would you consider that as an element of cost?

A. No, personally I would not.

Q. You are only actually figuring cost of operating the truck line, less the labor and the accessorial services, such as counsel fees, etc., you are not considering that?

A. No, the actual cost that—the actual cost figured by me as superintendent, to operate the truck.

Examiner Yardley: Is that all?

Mr. Oven: Mr. Chairman, yesterday we were required to furnish a statement by days as to intrastate freight handled on a truck during the month of January, 1938. We have supplied opposing counsel with that document and would like to file with the Examiner the original of it, you have it there, and in addition to that I would like to ask liberty to file with this Board a certified copy of the opinion of the Supreme Court of Florida in the case entitled "Central Truck Lines vs. the Railroad Commission of Florida and Receivers of the Seaboard Air Line," which went there on certiorari to an order of the Railroad Commission of Florida that involved the granting, under a statute passed in [fol. 1501] 1937, of a certificate to operate in the State handling intrastate business; I wish to do this because of the fact that our Court has very clearly construed this act, they determined we have a right to the service, and in view of the recent decision of the Supreme Court of the United States in the case of Erie Railroad vs. Burlip, overruled, in which case Mr. Justice Brandeis lays down a rule as shall be observed in Federal Courts, so consequently I take it that the Interstate Commerce Commission will likewise following the ruling of the Court. I will have that furnished within the next few days.

Mr. Kitchen: Mr. Chairman, in conjunction with the statement of Counsel for the applicant, this Counsel representing certain protestants will state for the benefit of the record that the opinion referred to by said Counsel for protestants is being taken on an appeal on certiorari direct to the Supreme Court of the United States.

Mr. Oven: Admitted.

Examiner Yardley: The statement, etc., will be received as Exhibit 3.

(Exhibit No. 3, witness Sauls, received in evidence.)

J. A. Bliss, was sworn and testified as follows:

Direct examination.

By Mr. Kitchen:

Q. Will you state your name?

[fol. 1502] A. J. A. Bliss.

Q. What is your business?

A. Vice President, in charge of traffic, St. Johns River Line Company, Jacksonville, Florida.

Q. Is that a common carrier?

A. Yes.

Q. Does it also operate boats as well as trucks?

A. It is a common carrier by both water and motor vehicle, in both intrastate and interstate commerce.

Q. Where do you engage in interstate commerce by water?

A. From Jacksonville to Sanford and intermediate landings, that is interstate as well as intrastate; from Jacksonville to Daytona Beach, Florida, in both intrastate and interstate; from Jacksonville to Brunswick, which is interstate.

Q. Now on your route from Jacksonville to Brunswick, is Fernandina, Florida, an intermediate point?

A. It is intermediate.

Q. Between Jacksonville and Brunswick?

A. It is intermediate, geographically the channel is right by the main part of Fernandina, the Amalia River, but it is not a station on our line.

Q. It is not?

A. No.

Q. Could you serve Fernandina with that line?

A. From a physical point of view, yes.

[fol. 1503] Q. From what viewpoint can't you serve it?

A. We have several times, since August 31, when we instituted the Brunswick operation, surveyed to determine

whether or not Fernandina needed any additional transportation facilities.

Q. What did you find?

A. We have not felt that they needed any additional transportation facilities or could support more facilities than the one motor line and one rail line that now serve that town.

Q. Mr. Bliss, if your Company would have determined, or arrived, at a conclusion that Fernandina would support additional transportation facilities from that survey, would you have made Fernandina as a port of call by your boat?

A. We would have felt that the public would be better served by having a choice of three transportation services of different kinds, motor, water, and rail, than they would by having two railroads and one truck line or two truck lines and one railroad.

Q. Is it the policy of your Company to keep apace with the times and to constantly investigate into the possibilities of securing freight at Fernandina and other points?

A. That goes about the same, we try to keep in touch with what is going on.

Q. And you are still of the conclusion that Fernandina will afford no additional transportation facilities?

A. We pass Fernandina every night, three times a week in one direction, and three times in the other, and go practically up the main street and do not stop; we are not [fol. 1504] estopping ourselves from coming to a different conclusion, perhaps the testimony at this hearing will convince us that Fernandina needs additional service, but at the present time on the basis of periodic investigations, we have come to the conclusion that they require no additional transportation service.

Q. Mr. Bliss, do you know what transportation services are offered in Fernandina at the present time?

A. The Seaboard Air Line and McJunkin.

Q. Have you any other statement for the record that you care to make with reference to the adequancy of the now existing transportation facilities?

A. We have had a reasonable opportunity to observe the services of the Seaboard Air Line and the McJunkin Truck Line, and I believe that both are efficient carriers.

Q. Mr. Bliss, do you at the present time, interchange freight with the McJunkin Line for Fernandina?

A. Some.

Q. Now, Mr. Bliss, if the Interstate Commerce Commission should grant a certificate to the Seaboard Air Line Railway and the McJunkin Line was forced to go out of business, how would you interchange freight?

A. According to our present understanding we will be unable to interchange with any carrier, it might become necessary then to stop at Fernandina.

[fol. 1505] Q. So you would have no alternative otherwise than stopping at Fernandina to serve your own freight?

A. We might give up that transportation that affected Fernandina and lose the revenue.

Q. How would the public be served?

A. The public would have less routes available into Fernandina, they would have no choice of routes.

Q. Have you found Mr. McJunkin's service adequate for your needs?

A. Yes.

Q. Have you any qualifications that you wish to make on that answer?

A. No.

Cross-examination.

By Mr. Oven:

Q. How much tonnage do you deliver to McJunkin in a year?

A. I do not have those figures, the amount is infinitesimal—it is not more than infinitesimal anyway, I would say it is probably about the same as the outbound shipments from Fernandina over your line, less than carload, some where within that range.

Q. You mean to say you deliver as much coming in there as the Seaboard Air Line hauls out by rail and by truck?

A. Well, it will be somewhere within that range, for instance, if you want any exact figures I simply can't give them to you.

Q. Why can't you?

A. For the same reason that some of your witnesses——

[fol. 1506] Q. Can't you get up that statement, have you got a representation sheet here in Jacksonville?

A. Yes.

Q. I ask that you submit that over a period of the same time shown by our statement, to-wit, November 16, 1937, to June 15, 1938?

A. I am not particularly anxious to.

Mr. Matthews: You might give them that if you can furnish it.

Mr. Oven: File it with the Examiner and give me a copy.

Examiner Yardley: Within 20 days.

The Witness: Yes, sir, I can do that; I might call your attention to the fact that during one month on your sheet 2 the amount of freight shows forwarded from Fernandina, intrastate, LCL, 541 pounds.

Q. Let that statement show whatever it will show?

A. I am sure it will be within that range.

(Above information to be furnished within 20 days by witness Bliss).

Q. Assuming, for the sake of argument, that the McJunkin Line did go out of business, and that you received freight consigned to Fernandina, you have stated that you have three steamers a week passing each way?

A. Three motor ships.

Q. Well, they are vessels?

A. Yes.

[fol. 1507] Q. Couldn't that freight go in on one trip and let the other two go by, if necessary, would it be necessary for each vessel to go into Fernandina each way on each trip?

A. So far as the vessels are concerned, they do not need to go about——

Examiner Yardley: Could they or could they not?

The Witness: I don't think I can give a "Yes" or "No" answer.

Examiner Yardley: You wouldn't want to do it, but the boat could come up there just the same as it passes by, surely it could stop.

The Witness: There would be practically no expense to the boat as to stopping there, the expense would go through initiating any service, putting in a warehouse, etc., I would say $2.50 would cover stopping the boat.

Examiner Yardley: Your answer is "Yes" you could but it would be too expensive—let's forget it.

Mr. Oven: That is all.

(Witness excused).

J. C. STEADMAN, was sworn and testified as follows:

Direct examination.

By Mr. Kitchen:

Q. What is your name?
A. J. C. Steadman.
Q. And you are connected with what Company and in [fol. 1508] what capacity?
A. The K. & L. Transportation Company, General Traffic Manager.
Q. They are common carriers by truck?
A. Yes, sir.
Q. Do you interchange freight with the McJunkin truck or bus lines?
A. Yes, sir.
Q. Do you find their service adequate for your needs?
A. Yes, sir.
Q. Have you ever made an investigation into the territory between Jacksonville and Fernandina, particularly with reference to Fernandina?
A. No, sir.
Q. Approximately what tonnage do you give McJunkin?
A. I can't give you any accurate figures on that.

Examiner Yardley: Can you give him any?

The Witness: Yes, I might say in explanation that we have a coordinated service with other truck lines throughout the United States, by virtue of joint rates and there is a natural flow of traffic, of which a quantity would be destined to Fernandina.

Q. Mr. Steadman, you heard the testimony of the witness on the stand for the Seaboard Air Line?
A. Yes, sir.
Q. If the Seaboard Air Line was granted this certificate [fol. 1509] and you could not make an interchange with said Seaboard Air Line, how would you get your freight to Fernandina?
A. The only way we could get it there would be to send it by the Seaboard Air Line.
Q. They would not make an interchange, according to the witness, is that correct?
A. No, sir, we would have to ship it as consignor.

Q. Then could you establish through rates from points in Georgia and other States to Florida?

A. No, sir, it would be a combination of locals.

Q. Would that be higher or lower than the through rate?

A. It would be higher.

Q. Is there any other statement which you wish to make for the record?

A. Nothing other than this, if we don't have the McJunkin Truck Line to interchange with, there is other carriers that wouldn't be apprised of the fact that there was no service into Fernandina by motor carrier and it would inconvenience some customers, the same consignors who would make a shipment by truck and there would be no method of disposing of them to effect the ultimate delivery, except by the process I mentioned and by doing that it would cost the customer an additional expense.

Q. Do you ever have an occasion to drive from Jacksonville to Yulee on U. S. Highway 17?

A. Yes.

[fol. 1510]. Q. Is that often?

A. I usually make the trip at least once a month.

Q. From your observations, would you say that U. S. Highway 17 from Jacksonville to Yulee is congested or not?

A. Fortunately the times I have been over it, the times I have been over it it doesn't show much congestion.

Cross-examination.

By Mr. Oven:

Q. Do you operate through Yulee to Brunswick?

A. No.

Q. Does your truck pass Yulee at all?

A. No.

Q. What is the nearest point to Fernandina that your trucks touch?

A. That would be a matter of guess, I would say possibly Callahan.

Q. How far is that from Fernandina?

A. I don't know.

Q. That is on the Seaboard Air Line?

A. I understand by the testimony of your witnesses that it is.

Q. Then if this dire result that Mr. Kitchen presupposes comes to pass, you can deliver your freight to Callahan and——

A. Yes, we could if the arrangements could be made.

Q. You could deliver it to the St. Johns River Line and let them stop there?

A. Not where a customer designates a truck routing.

[fol. 1511] Q. Don't they operate as a truck, as well as steamer?

A. You speak of the truck and steamer, it would be steamer.

Q. It would be a truck line handling it?

A. We would be, in connection with the water line.

Redirect examination.

By Mr. Bliss:

Q. You could not interchange with us at Fernandina unless we decided to serve the town?

A. No.

By Mr. Kitchen:

Q. Do you see any reasons to put Mr. McJunkin's line out of business for the purpose of establishing a boat line for the St. Johns River Company?

A. No.

Chairman Matthews: I think you are going too far afield because it is all supposition about him going out of business, he is operating today.

Wayne F. McJunkin was sworn and testified as follows:

Direct examination.

By Mr. Kitchen:

Q. What is your name?

A. Wayne F. McJunkin.

Q. Mr. McJunkin, what business are you in?

A. In the Truck and Bus Transportation business.

Q. What is the name of your Company?

A. The Wayne F. McJunkin Truck and Bus Line.

Q. Where do you operate from and to?

A. From Fernandina to Jacksonville.

[fol. 1512] Q. Over what highways?

A. State Highways 3 and 13.

Q. 3 to Yulee and 13 to Fernandina?

A. Yes.

Q. How long have you been so engaged in business?

A. I have been in business there about 15 or 16 years.

Q. Did you at one time have a contract with the Seaboard Air Line Railway to transport passengers and freight to Fernandina to Yulee?

A. Passengers, mail and express.

Q. Passengers, mail and express?

A. Yes, sir.

Q. Mr. McJunkin, are you operating at capacity now?

A. No, sir.

Q. Approximately what proportion—what volume, is it half, full, threequarters or what?

A. Compared to any particular time?

Q. No, I am speaking of at the present time, from Jacksonville to Fernandina?

A. Oh, I would say it is twothirds perhaps.

Q. What is your daily volume for tonnage from Jacksonville to Fernandina?

A. I would say in the neighborhood of an average——

Q. Yes?

A. The average would run around 3 tons or 6000 pounds.

[fol. 1513] Q. What would be your total daily average or tonnage from Fernandina to Jacksonville?

A. From Fernandina to Jacksonville?

Q. Yes.

A. Well, I would say in the neighborhood of an average, I imagine around 700 or 800 pounds, probably 1000.

Q. What transportation facilities are offered to the City of Fernandina in addition to your truck line?

A. The Seaboard Air Line by train and then they have a truck that operates there.

Q. Does the Railway Express operate into Fernandina?

A. Yes, from Yulee, that is by bus and truck.

Q. Do they have any express delivery from Jacksonville to Fernandina?

A. By motor car.

Q. By rail or motor car?

A. They have rail to Yulee and motor to Fernandina.

Q. Have you made an investigation in the City of Fernandina to ascertain whether or not additional transportation facilities were needed?

A. Yes, sir.

Q. What did you find from such investigation?

A. I found there was not any need.

Q. For additional service?

A. Yes, sir, I found there was no need for any addi-
[fol. 1514] tional service.

Q. If additional service was required, would you be in position to supply such additioinal service by the addition of another truck?

A. Yes, sir.

Q. What schedule do you operate on?

A. The truck schedule leaves Fernandina at 9 in the morning and arrives at Jacksonville at 10:30.

Q. What time do you leave Jacksonville?

A. Scheduled to leave at 3.

Q. And what time do you arrive at Fernandina?

A. 4:30.

Q. And you only operate one truck in that service?

A. Except when we have an overload, we have another truck coming here from Fernandina to help us out when we have that.

Q. How often does such an occason arise that you have an overload?

A. I can't recall just when, I don't recall, where it required an additional truck—oh, I would say perhaps once a month or something like that, and then again once in two months.

Q. Did you file a financial report with the Florida Railroad Commission?

A. Last year?

Q. Yes.

[fol. 1515] A. Yes.

Q. Did you show a profit or loss on such a report as compared with 1936 to 1937?

A. Well, of course, the combination of the bus and truck, I showed a profit, I don't recall just what the difference in the service was, but that is the truck and bus service.

Q. With your truck operations segregated there, your passenger operations for the year of 1937 to 1938, compare

that with the year of 1936 to 1937, does it show a gain or loss?

A. It showed a gain in 1937, that was due to the fact of business increases, in other words, the building of two pulp mills there and things of that nature which naturally raised the tonnage.

Q. Those mills are now completed, one is and the other one is not?

A. No.

Q. You and the Seaboard Air Line and the Express Company have given service all through that period?

A. Yes.

Cross-examination.

By Mr. Oven:

Q. Mr. McJunkin, when did you begin operating this truck service out of Fernandina into Jacksonville?

A. Truck service?

Q. Yes.

A. I think it was way back in 1928 or 1929.

[fol. 1516] Q. Was the Seaboard Air Line operating in there at that time?

A. Yes.

Q. You state that 1937 showed an increase because of the construction going on, as to the installation of these two pulp mills and that one has now been completed?

A. Yes.

Q. And the other will shortly be completed, will it not?

A. I couldn't say.

Q. Isn't it a fact that the construction of those two pulp mills in Fernandina will afford employment to quite a number of people in that community?

A. I don't think there is any question about it.

Q. Doesn't it naturally follow that the increased population brought about by that construction would increase business into and out of Fernandina?

A. Well, I might state here that for the last four months, since the mill has started to operate, that business has gone down instead of up.

Q. That was because of the large volume of stuff moving in for the construction, wasn't it? Is business now less than it was in 1936?

A. I believe it is, yes.

Q. Will you state that positively?

A. Yes.

Q. How many men do these mills employ?

[fol. 1517] A. I don't have any idea.

Q. You operate by Callahan on one truck?

A. No, not the truck.

Q. Not on that truck?

A. No.

Q. You operate——

A. The truck goes direct to Fernandina over No. 3 and No. 13.

Q. Your bus handles packages to Callahan?

A. Yes.

Q. Can you tell me what your interchange is with the other truck lines in Jacksonville, interstate business?

A. You mean the nature of the shipments?

Q. No, the tonnage that you get from your truck connection in Jacksonville consigned to Fernandina coming from without the State?

A. Well, I couldn't state that positively, I don't remember what the figures are.

Q. Well, in round figures?

A. I imagine it would amount to, it would average around 1500 or 2000.

Chairman Matthews: A month?

The Witness: Yes.

Chairman Matthews: That would be only about 200 pounds a day.

The Witness: Yes.

Chairman Matthews: No, it wouldn't be that much. It [fol. 1518] would be about 50.

The Witness: Yes.

Q. What would be the average of your interstate business that you delivered to truck connections in Jacksonville, moving out of Fernandina?

A. You mean freight?

Q. Yes.

A. Well, it is practically all interchange—no, it wouldn't all be either.

Q. That is interstate?

A. At the present time I think that that averages around 500 or 600 pounds a day.

Q. Then you have more outbound interstate business than inbound?

A. At this time I think we have.

Q. What commodities does that consist of?

A. Of empty drums, shark hides and shark fins and things of that nature.

Q. Will you furnish, for the benefit of the record, a statement for the month of January showing your inbound tonnage interstate and your outbound tonnage interstate?

Chairman Matthews: For 1938?

Mr. Oven: Yes.

The Witness: Yes, I can do that.

Examiner Yardley: He will be allowed 20 days.

[fol. 1519] (Statement heretofore referred to by — to be furnished within 20 days by Witness McJunkin.)

Redirect examination.

By Mr. Steadman:

Q. Isn't it a fact that your truck line over the period of 1938, up to now, has shown that you operated at a loss?

A. I believe it would, yes.

Q. Will it show the same thing for 1937?

A. Well, no, not compared with 1936 it wouldn't.

Q. I mean the actual revenue coming in and the expense paid out?

A. I don't recall, it would be a slight profit I think, or it might be a slight loss, I couldn't say off hand, it is pretty close.

Q. Any additional service into Fernandina would mean a loss in tonnage to you, wouldn't it?

A. Yes.

Q. Would you say there is any new tonnage that would be available by additional service which could be initiated by virtue of a new service?

A. I don't think so.

By Mr. Kitchen:

Q. These new factories that you speak of, will the majority of their shipments be in carload lots or LCL?

A. The majority of it, as I understand, will be in carload lots.

[fol. 1520] Q. Is the wood that is brought in to make the pulp, is that usually handled by truck or rail?

A. I would say the larger percentage is handled by rail.

Q. And the other, would you say, that is handled by private truck?

A. Yes.

Mr. Kitchen: That is all:

Recross-examination.

By Mr. Oven:

Q. Have you lost any tonnage into or out of Fernandina that has been delivered to the Seaboard Air Line or its connections for transportation?

Mr. Kitchen: Mr. Chairman, I consider that question too speculative, it calls for a conclusion on the part of the witness, the Seaboard Air Line has not started the operation, so they say.

Mr. Oven: I didn't say by truck, I asked him if he had lost any—the point is this, this business belongs to the Seaboard Air Line, now it moves in and out of there by rail, he doesn't get it any way and he has not been getting it, although he has been operating for several year-, consequently it can't be a loss to him if we move it by truck.

Mr. Kitchen: That is purely a conclusion of Counsel, I would like for the Counsel to take the witness stand and be put on oath.

Chairman Matthews: Objection sustained.

(Witness excused.)

[fol. 1521] James P. Page was sworn and testified as follows:

Direct examination.

By Mr. Kitchen:

Q. Where do you live?

A. Callahan.

Q. Do you have a business in Fernandina?

A. Yes.

Q. What business?

A. Service Station.

Q. Do you receive interstate shipments or do you ship interstate shipments?

A. Yes.

Q. What transportation facilities do you use in the receiving or shipping of such shipments?

A. As an individual I use the bus line, sometimes my Company uses the Seaboard Air Line.

Q. Are you familiar with the transportation facilities in Fernandina?

A. Yes.

Q. What transportation facilities are there there?

A. Seaboard Air Line and McJunkin.

Q. Does the Railway Express also operate in there?

A. I understand it does, over the Seaboard Bus.

Q. From your knowledge of business conditions in Fernandina and the knowledge of your own business, would [fol. 1522] you say there is adequate and sufficient transportation facilities now existing?

A. Yes.

Q. From your investigation, have you found any need for additional transportation facilities?

A. No.

Cross-examination.

By Mr. Oven:

Q. You say you used the truck lines personally?

A. Yes, sir.

Q. About how much tonnage do you give them interstate per month?

A. I don't give them but very little, I wouldn't know just how much, it would be a very small amount interstate; on intrastate it would only run to a small amount.

(Witness excused.)

George D. Joyner was sworn and testified as follows:

Direct examination.

By Mr. Kitchen:

Q. What Company are you connected with?

A. The R. C. Motor Lines.

Q. In what capacity?
A. Vice President.
Q. Do you handle any of the traffic?
A. Yes, sir.
Q. You are familiar with the shipment of freight?
A. Yes, sir.
[fol. 1523] Q. Have you at any time had any occasion to use the McJunkin Bus and Truck Line to Fernandina?
A. Yes, a couple of months ago we had one shipment.
Q. Is that the only time?
A. The only time that I can recall.
Q. McJunkin is shown in the Southern Motor Carriers Rate Conference Guide?
A. Yes.
Q. Do you avail yourself of that carrier as a connecting carrier for shipments destined to Fernandina?
A. Yes.

Cross-examination.

By Mr. Oven:

Q. You say you only had one shipment?
A. Yes, sir.
Q. Was that interstate or intrastate?
A. It was interstate.
Q. What was that?
A. It was interstate.
Q. This one shipment in the course of 12 months?
A. The only one I recall that we have had.

(Witness excused.)

A. J. RINCK was sworn and testified as follows:

Direct examination.

By Mr. Kitchen:

Q. Where do you live?
A. Fernandina.
[fol. 1524] Q. How long have you resided there?
A. 16 years.

Q. What business are you engaged in?
A. Mechanical contracting and bottled gas.
Q. Are you a member of the Chamber of Commerce?
A. Yes.
Q. You are not appearing here for the Chamber of Commerce?
A. No, sir.
Q. What transportation facilities are offered in the City of Fernandina?
A. Seaboard Air Line and Railway Express and McJunkin.
Q. From your investigation and knowledge what would you say as to the service now being offered in Fernandina, is it efficient or inefficient?
A. I have found it efficient.
Q. You do use the facilities for interstate shipments?
A. I use both, most incoming on the Seaboard Air Line and outgoing by McJunkin.

Cross-examination.

By Mr. Oven:

Q. What is the nature of your interstate shipments?
A. Bottled gas.
Q. Bottled gas?
A. Yes.
Q. About how much tonnage a month do you get in on [fol. 1525] interstate shipments?
A. I would say it would average between 1800 and 2500 pounds.
Q. That comes by rail or express?
A. Bull Steamship to Jacksonville and Seaboard Air Line to Fernandina.

Redirect examination.

By Mr. Kitchen:

Q. The service as offered by the Seaboard Air Line is satisfactory?
A. Yes.

(Witness excused.)

J. M. OXLEY was sworn and testified as follows:

Direct examination.

By Mr. Kitchen:

Q. Where do you live?

A. Fernandina.

Q. In what business are you engaged?

A. I run a Funeral Home.

Q. Are you familiar with the transportation facilities over in Fernandina?

A. Yes, sir.

Q. What are they?

A. Seaboard Air Line, Railway Express operating over the Seaboard Air Line, and the McJunkin Bus and Truck Line.

Q. From your investigation and knowledge of the conditions in and around Fernandina, would you say that [fol. 1526] such a City is adequately served now?

A. Yes, sir.

Q. Mr. Oxley, do you have any occasion to operate on State Road 13 to Yulee and from Yulee to Jacksonville on U. S. Highway 17?

A. I do.

Q. What is the condition of the Highway with reference to congestion?

A. I find traffic very congested, I travel around 5000 miles a month over the Highways in and around Fernandina.

Cross-examination.

By Mr. Oven:

Q. Is that the main road?

A. I am talking of 13 and U. S. Highway 17.

Q. When did you make that survey?

A. I have made it mighty nearly every day for the last 8 years.

Q. You say you run a funeral home?

A. Yes.

Q. What is the character of the goods that you have coming in and going out?

A. Caskets and embalming fluids.

Q. Caskets move by freight?

A. Yes.

Q. In carload lots?

A. No, not enough for that.

Q. How about the embalming fluids?

[fol. 1527] A. It comes in cases.

Q. You say it comes in cases?

A. Yes, some of the goods come over the Seaboard Air Line, some over truck lines.

Q. From where?

A. Different points, the greater portion comes from Jacksonville.

Q. Have you had any shipments this year?

A. Yes, by truck line.

Q. How many?

A. I don't know the exact number, a lot of times, I just got in my own equipment and go and get it myself.

Q. Do you buy it here in Jacksonville?

A. The major portion of it, yes.

Q. The amount you get out of the State of Florida is negligible?

A. Sometimes I have more than others.

Redirect examination.

By Mr. Bliss:

Q. Are you interested in retaining a choice of transportation agencies, I mean both rail and trucks?

A. I didn't get the question.

Q. I say, is it a benefit to you to have a choice of two transportation agencies, one rail and one motor?

A. Absolutely.

Q. Are you interested in being able to make that choice [fol. 1528] yourself insofar as the shippers and people you do business with—they leave the routing up to you?

A. Yes, there are certain hours of the day I might want something delivered, I might want it and couldn't get it in schedule time.

Q. Suppose you ordered a shipment over a mixture of rail and truck service and you didn't know whether that shipment would arrive by truck, at one hour, or by rail at another hour, would that uncertainty as to its arrival be embarrassing to you?

A. In all probability, yes, on certain occasions, but on those cases I specify the transportation service.

Q. Suppose you were unable to make the choice yourself?
A. It might prove embarrassing at times.

Recross-examination.

By Mr. Oven:

Q. How many coffins a year do you get in from out of the State as distinguished from what you buy in Jacksonville?

A. I have around 70 to 75 funerals a year, I would say approximately about one quarter of them comes from out of the State.

Q. About a quarter of them?

A. Yes.

Q. Would the percentage be the same as to the embalming fluid?

A. Practically all of that comes from out of the State.

[fol. 1529] Q. That comes by freight or express?

A. It comes by freight unless I specify express.

Q. That moves in then by rail?

A. Sometimes by rail and sometimes by truck line, according to which Company is comes from.

Redirect examination.

By Mr. Schwartz:

Q. In connection with your funeral home, you render ambulance service?

A. Yes.

Q. That is on U. S. Highway 17 between Jacksonville through Yulee and North?

A. Yes, and within a radius of 50 miles.

Q. You use Highway 17—is that one of the main tourist arteries?

A. Yes.

Q. What is the condition of that Highway at the present time?

A. Very poor, there has been a little work done on it, but in my opinion it is now worse than it was before they did the work.

Q. That is from the Jacksonville City limits to the Nassau County Line?

A. Yes.

Q. What is the description of that Highway?

A. It is broken—it is asphalt and all broken up; they widened it a little on each side and you can't tell where [fol. 1530] the Highway stops at all, it has got little ruts all in it. If you get off the main part you are liable to turn over. I came very near turning over myself. I drive the emergency ambulance and find it very hard to get around.

By Mr. Kitchen:

Q. Would you say it is a dangerous Highway?

A. Yes.

Q. Have you any reason why you would prefer rail service from Yulee to Fernandina as over truck service now offered by the Seaboard Air Line?

A. The only reason that I would prefer it, and which I had at all times, whenever I am shipping a body from Fernandina, I always take it to Yulee or else bring it to Jacksonville, because I don't care to send it over the truck, it shakes a body up and causes it to be in bad condition at the time it is received on the other end, and the same applies to coming in, I always go to Yulee and get the body, or go to Jacksonville.

Recross-examination.

By Mr. Oven:

Q. Does that move by passenger or freight?

A. By passenger train or by truck from Yulee in.

Q. That really would come in on the Yulee-Fernandina truck and not on the Jacksonville truck?

A. Yes.

Q. And you make a good many deliveries with your own ambulance?

A. Yes.

Q. And haul a good deal of your own stuff?

[fol. 1531] A. Yes.

(Witness excused.)

McCarthy Crenshaw was sworn and testified as follows:

Direct examination.

By Mr. Kitchen:

Q. What is your name?

A. McCarthy Crenshaw.

Q. What is your business, and with what Company are you connected, and in what capacity?

A. I am a practicing attorney and also hold the office of Assistant Secretary of the L. & L. Freight Lines.

Q. As such officer are you familiar with the traffic conditions of the L. & L. Freight Lines?

A. Not in detail, but representing the owners of the Company, the Company makes monthly reports to me and I in turn convey that information on to the owners and I am familiar with the general operating conditions of the Company.

Q. Does the L. & L. interchange freight with the McJunkin Truck and Bus Company?

A. Yes, sir.

Q. Have you found their service adequate for your needs?

A. Yes, sir.

Cross-examination.

By Mr. Oyen:

Q. How much of that interchange freight is interstate?

A. I think I can best answer your question in this way: [fol. 1532] The Florida carriers, common carriers by motor vehicle, have an unusual problem in that practically 65 percent and sometimes 70 percent of the haul is southbound, coming from the North into Florida, and our operation out of Florida North, I speak of it running practically empty, and the freight that we have to interchange with McJunkin would bear the same proportion, that is, by far the greater portion would be the freight that moves into Florida in interstate commerce.

Q. What is your interstate tonnage per month that you deliver to Mr. McJunkin?

A. I am not sufficiently familiar with the details of the Company to give you that.

Q. I will ask that you be required to furnish a statement for the month of January, 1938, showing interstate freight moving in and out of Jacksonville for and from Fernandina?

A. We will be glad to furnish such a statement.

Chairman Matthews: Let's have it in 20 days.

(Statement referred to above to be furnished within 20 days by witness Crenshaw.)

Redirect examination.

By Mr. Steadman:

Q. In the event that this application is granted and the McJunkin Truck and Bus Line is forced to retire from business, would you have anybody to interchange your freight with?

A. To my knowledge McJunkin is the only carrier running in there that is strictly a motor vehicle carrier.

[fol. 1533] Q. You would have no other means of interchanging freight except with the Seaboard Air Line?

A. That is right.

Recross-examination.

By Mr. Oven:

Q. This freight that you delivered to McJunkin is received by your line from the North or its connection?

A. Some of it is given to us at Atlanta and we also have the privilege of picking up freight in Georgia in interstate commerce as far as Waycross.

Q. It is all freight delivered to your Company as a motor carrier or other motor carrier connected with your Company?

A. Yes, now that is incorrect, because we do have a service with the Universal Carloading Company where rail shipments are brought South as far as Atlanta and are broken up.

Q. It moves then by truck to Florida?

A. Yes.

Q. And then by McJunkin Truck into Florida?

A. Yes.

Q. But none of it is freight that is delivered to the Railway Company for transportation into Florida?
A. Not that I know of, no, sir.

Redirect examination.

By Mr. Bliss:

Q. Do you interchange with water carriers such as the Coastwise Steamship Lines?
A. I believe we do.
[fol. 1534] Q. Generally speaking, is the L. & L. Freight Lines and its connections in competition with the Seaboard Air Line and its rail connections?
A. Absolutely.

(Witness excused.)

Examiner Yardley: Any briefs to be filed?
Mr. Oven: I would like to file a brief, how much time will be allowed?
Mr. Kitchen: Mr. Examiner and Chairman, can't we have more than 30 days in this case?
Examiner Yardley: Is August 1 satisfactory?
Mr. Kitchen: Yes.
Mr. Oven: It suits me.
Examiner Yardley: Then, if an extension of time is required, your request for an extension must be in the Washington office seven days before the brief—file a copy of the brief with the Examiner and one with Mr. Matthews.
Mr. Crenshaw: I wish the record to show that McCarthy Crenshaw appears for the L. & L. Freight Lines, Inc., as a party protestant to this application for the reason that the L. & L. Freight Lines, Inc., has a material interest in this application and wishes to participate in the complete proceedings.
Mr. Oven: Now, I understand the exhibits will be fur-
[fols. 1535-1536] nished in 10 days.
Chairman Matthews: 20 days. The Board will take this case under advisement.

(Whereupon, at 11:35 o'clock a. m., the hearing closed.)

[fol. 1537] Before the Interstate Commerce Commission

Docket No. MC 86687 (Sub. No. 19)

LEGH R. POWELL, JR., and HENRY W. ANDERSON, Receivers of Seaboard Air Line Railway Company—Application for Certificate Form BMC 8

Floridan Hotel, Tampa, Florida,
January 23, 1939, 10 o'clock a. m.

Before Joint Board No. 205; Hon. Eugene S. Matthews of Florida, Chairman

Also Present: Examiner Richard Yardley, of the Interstate Commerce Commission.

Met pursuant to notice.

APPEARANCES:

W. J. Oven, Midyette-Moor Building, Tallahassee, Florida, appearing for Legh R. Powell, Jr. and Henry W. Anderson, Receivers of Seaboard Air Line Railway Company, Applicant.

Edgar Watkins, Jr., Bona-Allen Building, Atlanta, Georgia appearing for Southern Motor Carriers Rate Conference, Protestant.

John M. Allison, 305 Morgan Street, Tampa, Florida, appearing for Common Carrier Division, Florida Trucking Association; Central Truck Lines; Hunt Truck Line; Great [fol. 1538] Southern Trucking Company; Acme Freight Lines; L. & L. Freight Lines; Star Truck Line; Bee Line Transfer; Green Brothers Transfer; Tarpon Truck Line; Tamiami Trail Tours; Fogarty Brothers Transfer; Overseas Transportation Company; Peters Truck Lines; Atkinson Truck Line; University City Transfer: Protestants.

J. A. Bliss, P. O. Box 90, Jacksonville, Florida, appearing for St. Johns River Line Company; Harold R. Edwards d.b.a. Edwards Line; Harold R. Edwards d.b.a. Hartline Line: Protestants.

[fols. 1539-1541] Proceedings

Chairman Matthews: Let's have order.—The interstate Commerce Commission has set for hearing at this time and place Docket No. MC 86687 (Sub. No. 19) in the matter of

the application of Legh R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway Co., of S. A. L. Railway B ''ding, Norfolk, Virginia, for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate Commerce in the State of Florida over the following routes:

I assume that all interested parties have notice of this? It is not necessary to read this in detail?

Mr. Watkins: It is all right with me.

Chairman Matthews: Said hearing being set before Joint Board No. 205, composed of Eugene S. Matthews of Florida.—Who appears now for applicant?

Mr. Oven: W. J. Oven, Midyette-Moor Building, Tallahassee, Florida, for applicants.

Chairman Matthews: Who appears for protestants?

Mr. Watkins: Edgar Watkins, Jr., for the Southern Motor Carriers Rate Conference; offices Bona Allen Building, Atlanta, Georgia.

Mr. Allison: John M. Allison, for the Common Carrier Division, Florida Trucking Association; and the following [fol. 1542] lines: Central Truck Lines; Hunt Truck Lines; Great Southern Trucking Company; Acme Freight Lines; L. & L. Freight Lines; Star Truck Lines; Bee Line Transfer; Green Brothers Transfer; Tarpon Truck Line; Tamiami Trail Tours; Fogerty Brothers Transfer; Overseas Transportation Company; Peters Truck Line; Atkinson Truck Line; University City Transfer. My office is at 305 Morgan Street, Tampa, Florida.

Mr. Bliss: J. A. Bliss, Jacksonville, Florida, appearing for St. John's River Line Company; Harold R. Edwards, doing business as Edwards Line; Harold R. Edwards, doing business as Hartline Line.

Examiner Yardley: What is the interest of the protestants? Do you operate over part or all of the route covered by the application?

Mr. Bliss: That is true, as to the lines I am representing.

Examiner Yardley: And you, Mr. Allison?

Mr. Allison: As to these lines, the following operate in a part or all of the territory involved in the application: Tamiami Trail Tours, Star Truck Lines, Great Southern

Trucking Company. Hunt Truck Line serves every point involved. Central Truck Lines.

Examiner Yardley: And what is the interest of the other lines?

Mr. Watkins: The interest of the other lines is the in-
[fol. 1543] terest of the motor carrier——

Examiner Yardley: Wait a minute; Mr. Allison, didn't you appear for other trucking companies?

Mr. Allison: I appear for the common carrier division of the Florida Trucking Association. Their interest in this proceeding, protesting this, is the interest of the motor truck common carrier industry. While they are not directly serving this territory involved, they are interested, because they are members of that association, and in the same industry.

Examiner Yardley: And your interest is practically the same?

Mr. Watkins: The interest of the Southern Motor Carriers Rate Conference is that the Seaboard Air Line Railway are attempting to parallel their entire system with truck service. They have on file with the commission some 19 applications, which are subdivided in such a way as to make it impossible to have a fair hearing concerning any of them. The trucking industry as a whole is opposed to allowing any railroad to go to the trucking business, where there is existing trucking service available; and as such, we oppose the application of the Applicant in this case: As well as the fact that we represent members,—number of carriers, who serve the actual territory asked to be served by the Seaboard Air Lines.

Examiner Yardley: All appearing here have been admitted to practice before the Commission, as I understand?

[fol. 1544] Mr. Watkins: Yes.

Chairman Matthews: We are ready to proceed.

Mr. Watkins: Mr. Chairman, before you proceed, on December the 5, 1938, after this case was set for hearing, and after cases involved in the same docket number and Sub. Nos. 1, 11, 12, 13, 14, 16, and 17 were set for hearing in Atlanta, Georgia. On behalf of the people that I represent I filed with the Interstate Commerce Commission a petition for intervention for all of those cases, and a motion for consolidation of these cases and a setting before

the proper authority. That petition was returned to me by Interstate Commerce Commission under sate of December the 10th, stating that I might make that petition before the Joint Board that was here, hearing this case. Having had previous experience along such lines in the hearings under the same docket number, Sub. No. 11, in Columbia, South Carolina on June the 11th, in which the Joint Board ruled that my motion was not timely, in that it should be submitted to the Commission, I returned the said petition to the Commission under date of December the 13th, informing them of their former ruling; and under date of January the 4, the Commission acknowledged receipt of my petition. However, no ruling has been made on the same; and at this time I desire to submit to the Chairman a copy of my petition and ask that the ruling be made thereon. And in the absence of any ruling being made thereon, I want to object to this hearing proceeding [fol. 1545] on the ground that hearing is one that under the Act must go before a properly constituted Joint Board, which would be one composed of a representative of the State of Virginia, North Carolina, South Carolina, Georgia and Florida,—or before an Examiner. Because the Seaboard Air Line Railroad has on file with the Commission, grandfather clause applications, or new applications, that involve trucking service in all of those five states. And even if their truck service is not connected, they have rail service and truck service in all of those five states, and thus the application here is only a part of a scheme of the Seaboard Air Line Railway to begin complete truck service in the five states I have named. Thus the Joint Board here is il-egaily constituted, and has no authority to pass upon this matter. And I wanted *at* distinctly understood that my appearance here this morning in no way waives the objections that I have made to this and similiar hearings that have been held on this and related dockets.

Mr. Oven: May it please the Board, i- seems to me that if any such application as this was to be made at this time, in the first place, we s-ould have been given notice of it; because we have here witnesses from practically every point served by these truck lines to testify as to the convenience and necessity of such. Furthermore it is a service permitted by the legislature of the State of Florida, and is only fron Tampa to Sebring, handling freight that

[fol. 1546] comes into Tampa by rail, and it will go out of Tampa by rail. It is no- connected interstate shipment by truck, whatsoever. In fact I know of no truck line operated by the Seaboard except possibly one,—there may possibly be two, that operate between States; and under the Motor Carrier Act, why this is the proper board to hear this application.

Mr. Watkins: Mr. Chairman, in connection with the statement made by counsel, I want to call the Commission's attention to the fact that on December the 5th, a copy of this petition was sent by registered mail to the Seaboard Air Lines, and that on December the 7th Mr. Charles T. Abeles as counsel for the Seaboard Air Lines, acknowledged the receipt of the same, and answered the petition before the Interstate Commerce Commission. So the applicant cannot contend that they did not have notice of my contentions. And in connection with the statement he has made, concerning the Intrastate applications, may I ask that,—in order that the record may be clear, whether or not the applicant is relying upon—for this application—upon the fact that he has been granted interstate rights over the same territory by the Florida Railroad Commission.

Mr. Oven: We are not relying on it entirely. That is one of the points on which we rely; one of the points made upon the hearing.

Mr. Watkins: Does the applicant contend that the fact that they are given interstate—I mean intrastate rights, [fol. 1547] automatically gives them interstate rights over the same territory?

Mr. Oven: No, it wouldn't be here if that was the case.

Chairman Matthews: The motion of counsel will be overruled. The Interstate Commerce Commission has set the matter down for hearing before this Board, and therefor we will proceed under their instructions.

Mr. Watkins: May an exception be noted, Mr. Chairman?

Chairman Matthews: Yes, note the exception.

Mr. Oven: To save time, may we not have it understood that to any ruling exception will be noted without encumbering the record with it?

Chairman Matthews: That will be all right.

Mr. Oven: The applicant now offers a certified copy of order No. 1880, Docket No. 216 of the Railroad Commis-

sion of Florida, authorizing the operation of the truck service along the line of the railway of the Seaboard Air Line, as between Tampa, and Sebring, at stations given over road shown in the map, touching only points served by the Seaboard Air Line Railway.

Mr. Watkins: May I have a copy of the same?

Mr. Oven: I have no copy of it; I can have one made for you.

Mr. Watkins: May I ask counsel, what is the purpose of offering this?

Mr. Oven: To show that we are now authorized to oper-
[fol. 1548] ate in intrastate business.

Mr. Watkins: That is the only purpose you have in offering it?

Mr. Oven: Yes.

Mr. Watkins: I have no objection, but I would like counsel to furnish me with a copy later.

Mr. Oven: I will do it.

Chairman Matthews: You offered that as an Exhibit?

Mr. Oven: Yes, sir.

Chairman Matthews: It will be received and marked applicant's Exhibit No. 1.

(Exhibit No. 1, for applicant, received in evidence.)

Mr. Oven: The next,—we ask that the Board take judicial notice of the case of Central Trucks Lines, Inc., versus Railroad Commission of Florida, reported in 182 Southern, Page 783, decided February 9, 1938, re-hearing granted and re-affirmed in July 1938 not reported in the Florida Reports, in which the Act under which the certificate for intrastate service was granted has been held constitutional and valid.—Mr. Abramson, will you come forward and be sworn?

Mr. Sam Abramson was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name please.

A. Sam Abramson, Sebring, Florida.

[fol. 1549] Q. You reside at Sebring, Florida?

A. I own the Hub Department Store in Sebring.

Q. Are you engaged in business, Mr. Abramson?

A. I — been there for the last ten years, yes sir.

Q. What line of business are you in?

A. General merchandise.

Q. Do you receive at the present time, by the Seaboard Air Line Railway, any freight from beyond the State of Florida, in interstate freight?

A. Lots of times, yes sir.

Q. Do you receive less than carload shipments in that way?

A. Not carloads.

Q. Less than carloads?

A. Yes, sir.

Q. Do you receive any freight from Tampa now, by the truck line being operated by the Seaboard Air Line, into Sebring? That is shipped out of Tampa and other points in the State?

A. I didn't quite catch that.

Q. Do you receive any shipments from Tampa direct?

A. To Sebring?

Q. Yes.

A. Yes, sir.

Q. State whether or not the authorization of this truck service to handle interstate shipments into Sebring, would be a convenience and is necessary to your business?

[fol. 1550] A. Well, I want to say this:

Q. Just keep your seat.

A. Thank you; I get shipments from the Hunt Truck and Central Truck Lines, and all the truck lines. But when I buy a bill of goods from Baltimore or any other state, and it has got to come here to Tampa and has got to lay over until they have—until they are connected with the freight trail, then bring it to Sebring, it delays me, and I need the goods sooner; and it would be more advantage to me if they would send it directly; you understand, take it off the train and put it on a truck, and send it on to me; would be more advantage to me to do that.

Q. That freight is delivered to the railroad at Baltimore, is it not?

A. Well if I buy goods in Baltimore.

Chairman Matthews: Let me interrupt just a moment; I am going to announce that under the rules of the Interstate

Commerce Commission we refrain from smoking during the hearing.—All right, proceed.

A. You see, if I buy a bill of goods in Baltimore. They ask me how do I want to ship it, Well, I tell them I want to ship it by the Seaboard; well they send it by the Seaboard, and if it comes in here it has got to lay over here until they get connections with another freight train; it may take four or five hours, maybe longer than that, before the [fol. 1551] goods come to me; and I need the goods, it would be more advantage to us, or to me personally, for them to bring their own truck and put it on the truck and let it go, instead of waiting until they get connections with the train. I think it would be a great more advantage to me by having it a little quicker than to lay it over here four or five hours and then ship it. That is the only reason I come here, and that is the only interest I am in it; otherwise, I don't care, the Seaboard or any others; I just came here for my own personally benefit.

Q. Do you think that this would benefit other receivers of goods?

A. Benefit everybody and everywhere; instead of keeping my goods here five or maybe six hours, to go ahead and send it right through and let me have it, instead of keeping it here.

Q. Wouldn't this service expedite the less than carload shipments by about 24 hours?

A. Well, I don't know anything about carloads, I never bought a carload.

Q. I say less than carload?

A. Yes, I think it would.

Q. Do you think it would benefit the other consignees there the same way?

A. I think so. I have a right to think that way, because it is the proper way to do.

Q. Do you receive any goods by Seaboard Rail service [fol. 1552] now, that were originally turned over to a truck line and later transferred to the railroad?

A. I don't think I did.

Mr. Oven: You may take the witness.

A. But I would be more satisfied if they would send my stuff right out, you know, immediately, than to keep it over here for several hours.

Cross-examination.

By Mr. Watkins:

Q. How many truck lines serve your place of business, Mr. Abramson?

A. Well, I do business with the Edwards and the Hunt and the Central Truck Line.

Q. Three of them.

A. They are just as nice as they could be, in the State, but if I bought a bill of goods in Baltimore and they got to ship it over here and they got to keep it here maybe overnight until they get connections, it delays the goods, and I need it; and I am a poor business man, a small one; and it would be more advantage to me and to others providing they would have their trucks and have their privilege to put the stuff right on, load it from the freight car and put it on their trucks and send it right out, instead of laying over here for several hours longer.

Q. These three truck lines that serve you, do they come out of,—where do they operate?

A. Only in the State.

[fol. 1553] Q. They operate only in the State?

A. Out of the state, they don't.

Q. Have you ever tried or asked that a shipment be routed from Baltimore to be delivered by the other lines, any one of the three? You never attempted to do that?

A. Never asked, and I don't think they could do it. I don't think, that that is—I don't know; the Hunt truck line goes to Baltimore and brings goods here; I don't — it. No, I never did it.

Q. You never investigated to find out whether they could?

A. No, sir, I did not. In fact they never come around to see me all they do, just bring their goods and I give them their money, and that's all there is to it.

Q. And their service is very nice?

A. Yes, I haven't got any objection to their service.

Mr. Watkins: All right, sir.

Mr. Oven: Otherwise than this delay at Tampa, do you find the Seaboard satisfactory?

A. That is the only reason I am here today, for that purpose.

By Mr. Allison:

Q. Do you know how many schedules as day these three truck lines have, running into your town?

A. I am not interested in it.

Q. Then you really don't know the full extent of your truck service that is available right now, do you?

A. I don't know, and I am not interested. All I just [fol. 1554] come here individually for my own purpose.

By Mr. Watkins:

Q. Mr. Abramson, you said you received goods from Baltimore,—did I understand you to say?

A. Yes, sir; from all over the country.

Q. Have you ever received a shipment by truck from Baltimore?

A. No, I don't think I did, because when I bought a bill of goods, from a wholesaler, they ask me how do I want it to be shipped; and I want it to be shipped to cost me the cheapest and the best.

Redirect examination.

By Mr. Oven:

Q. Were you patronizing the Seaboard Air Line Railway before this truck line between Tampa and Sebring was put on?

A. Yes, sir.

Q. In short, you have been a constant patron of it?

A. Yes, sir. If I could buy my goods directly and to be shipped right, I would be glad to—I am not obligated to none of them, to tell the truth. I don't want no favors from none of them. When I buy the bill of goods, do you understand, and when they come in and unload, they wait for their little check and I pay them for what I owe them. So it is immaterial to me who they are. None of them will do me anything unless I pay for it; they want money.

Q. Whether it is truck or railroad?

A. Whether it is truck or railroad, is right.

[fol. 1555] Mr. Watkins: The law requires that.

Recross-examination.

By Mr. Bliss:

Q. Mr. Abramson, do you ever receive any shipments that have travelled from Baltimore to Tampa over the boat line, water line?

A. I don't know how they travel, brother; I really couldn't tell you that, I don't know it. I couldn't give you that answer because I don't know.

Q. You say that you couldn't route shipments?

A. Write the house to send it to me the best they know how.

Q. Well you leave it up to them as how to send it?

A. Sometimes I have to leave it to them.

Q. I was wondering if you didn't know that the truck line could pick up a shipment at Tampa, that had come in from Baltimore by the Bull Steamship Line?

A. I don't know, sir.

Q. You never investigated that route?

A. No.

Chairman Matthews: All right; if that — all, you may stand aside.

By Mr. Allison:

Q. Mr. Abramson, if the Seaboard application here should be granted, do you understand that they are going to deliver that shipment of yours to your place of business, or just leave it in the same depot where you used to get it?

[fol. 1556] A. I couldn't tell you that.

Q. You just don't know that?

A. I don't know what they are going to do. If they don't give me service like I want it, I am going to tell them to go somewheres; get my goods. I am not obligated to nobody, brother. I come to you and ask you for service, I expect to pay for it. I am not connected with nobody else, only the one that treats me right, I will treat them right. I feel that way towards everybody. Otherwise I am a good old American citizen, and thank God I am here instead of being in Germany.

(Witness excused.)

Mr. Watkins: Mr. Chairman, just as a suggestion I would like to ask the Seaboard, the applicant here, to put in the record just what they are applying for, and hoe they intend to operate it, so that we will be able to more intelligently ask questions of the witnesses who are supporting the application. At the present time we don't know what service they are proposing, and it is very difficult and will probably enlarge the hearing if we have to cross-examine these witnesses before we have got any idea as to what service the applicant is proposing.

Mr. Oven: May it please the Board, I think the application shows what we propose to do; and I would be glad to furnish the gentleman schedules. My purpose in proceeding in this manner was to relelve these businessmen from various points along the line, let them get back to their work. Now Mr. Abramson and Mr. McRae are here from [fol. 1557] Sebring; we have some from Avon Park, Winter Haven, Lake Wales, and Bartow. I have of course *of course* the agents from those points, also the agent from Tampa, and also two train masters, to show the operation of our train service. Now it is my purpose to relieve these non-employees witnesses, and the agent at those stations so they can go back to their work. That was my purpose in proceeding along this line. I might call one agent here.

Mr. Watkins: I sympathize with these business men here, I know I would like to see them get back to their places of business as soon as possible; but I would like——

Examiner Yardley: What point is it you don't understand, Mr. Watkins?

Mr. Watkins: I don't know what schedule they intend to operate on, and just exactly how that truck is going to proceed from Tampa to Sebring, and how it is going to get up to Winter Haven, or Lake Wales, or some point like that,— just where it is going. I would like to know just when we can expect service from there at any given point on the line.

Mr. Oven: I can give you a copy of your schedule filed with the Railroad Commission of Florida, right here; that will give you the whole workd.

Chairman Matthews: You have a schedule filed with the Application, have you not, Judge?

Mr. Oven: Yes, sir.

[fol. 1558] Mr. Oven: They had notice of that.

(Discussion off the record.)

Mr. J. G. McRae was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, please.

A. J. G. McRae.

Q. Where do you reside, Mr. McRae?

A. Sebring.

Q. Are you engaged in business there?

A. Yes, sir.

Q. How long have you been engaged in business in Sebring?

A. Since 1930.

Q. In what business are you?

A. Variety, merchandise.

Q. Do you receive shipments from Detroit, from beyond the limits of the State, to you, there, consigned by railroad?

A. Oh yes.

Q. What railroad serves you there?

A. Seaboard and the Coast Line.

Q. Do you find any delay in the present Seaboard service, interstate?

A. Well, that is hard to say, because, you see, I am not a freight man, and I depend largely on the officials of *hte* railroad to look out for that. We have very good service [fol. 1559] though. Now just what the delays might be, I would be at a loss to know. Of course, any small merchants particularly, in fact any merchant for that matter, the quicker they can get merchandise, why the better off they are; because a small merchant particularly can't afford to buy a lot of surplus merchandise, and when he buys it he needs it, the quicker he can get it the better off he is. Our turn over is our only prospect to make a living today.

Q. If this application is granted, and by being granted, expedited l. c. l. shipments to you moving interstate into Sebring, would that be a convenience to you?

A. It looks to me, as it is outlined to me, that it would be quite a help.

Q. Would it help the other merchants in your town as well?

A. If it helps me, I don't see any reason why it wouldn't help anybody else too.

Q. Then, don't you think, to the extent that it would benefit you by expediting the movement by practically 24 hours, that it is really a necessity?

Mr. Watkins: Where do we get this 24 hours faster?

Mr. Oven: We are going to prove this later on.

Mr. Watkins: How about proving it now and stop asking about it.

Mr. Oven: We come back to the same question, that I would like to get rid of these people from out of town.

[fol. 1560] Chairman Matthews: Mr. Reporter, read the question again.

Q. (Question read:) Then, don't you think, to the extent that it would benefit you by expediting the movement by practically 24 hours, that it is really a necessity),—to you and the other merchants of the town?

Chairman Matthews: I think he may ask that question. Perhaps, you might have asked, Judge, if it did expedite it, 24 hours.

Mr. Watkins: I think it would be a much better way to do it.

Mr. Oven: Strike the question.

Q. Then do you not think that if the granting of this application would, should it later be shown by the evidence, expedite the interstate service, to you and the other merchants in the town, wouldn't that be a necessity?

A. Yes, sir.

Mr. Oven: Does that suit you now?

Mr. Watkins: That is better, but it does not exactly s-it me, Judge.

Mr. Oven: Take the witness.

Chairman Matthews: Cross-examine.

Cross-examination.

By Mr. Watkins:

Q. When does the train that brings your freight into—Sebring is where you are, isn't it?

A. Yes, sir.

Q. —arrive?

[fol. 1561] A. I don't know.

Q. When do they propose for the truck to arrive, under this proposed service?

A. Well, I couldn't tell you that.

Q. When does the Hunt Truck Line arrive in Sebring?

A. Sometimes during the day, but I don't know what hour.

Q. When does the Central Truck Line arrive?

A. I know when I buy merchandise about when I should get it, and I expect it at that time.

Q. What time do you suppose you would get it?

Mr. Abramson: When they get ready,—excusing my expression.

Q. When do you usually get it?

A. I don't understand your question;——

Q. What time of the day do you usually get your freight in?

A. It usually comes, if it comes by freight, it usually comes up the first thing in the morning.

Q. You mean by rail?

A. Yes sir.

Q. You get it the first thing in the morning? And if it comes by truck, when do you get it?

A. When the truck line comes in there; sometimes it is nine o'clock in the morning; sometimes it is two o'clock in the afternoon. It is not always the same time. Now——

Q. Is the truck service slower than the rail service?

[fol. 1562] A. Well, I am not here to argue that question.

Q. I don't want to argue it with you; I want to find out the facts about it. Is it?

A. My only interest if I can get merchandise delivered faster or quicker.

Examiner Yardley: The time of the day is not so important, but the time in transit it is the important thing?

A. Yes, sir.

Q. Well, does the line that it comes in on, make any difference to you?

A. Not a particle.

Q. You would just as soon it would come over the coast line as the Seaboard?

A. I am not tied to anybody or married to anybody except my wife.

Q. How much freight do you get, inbound over the Coast Line, compared to what you get over the Seaboard?

A. Well, most of our freight comes by Seaboard.

Q. You don't get much by Coast Line?

A. Very little.

Q. How much do you get by truck?

A. Well, not a great big amount of merchandise we get by truck, except what we get,—what merchandise we get out of Tampa.

Q. Most of it is inbound by Seaboard?

[fol. 1563] A. By railroad. In our particular kind of business, why Tampa does not offer very much market for our kind of merchandise, and we have to go out of the State to get it.

Q. Where does your freight originate at?

A. Start from?

Q. Yes.

Q. New York State.

Q. Out of New York State?

A. Yes, sir.

Q. And when freight comes into you by the Seaboard, how is it delivered at your place of business?

A. How?

Q. Yes.

A. By truck.

Q. Is that being done now?

A. Yes, sir; comes from the freight house to the store by truck.

Q. Whose truck is that?

A. Now the truck belongs to a transfer firm right there in town.

Mr. Oven: I will prove that by our agent.

Mr. Watkins: I wish you would hurry up.

A. But the railroad delivers the freight.

Mr. Watkins: That is all I have right now.

By Mr. Allison:

Q. Mr. McRae have you ever compared the charge in [fol. 1564] transit of your freight from its point of origin to your town of Sebring by all rail and by rail and truck where it comes in on truck lines or some other line?

A. No, sir?

Q. Then you don't know whether we might not get there ahead of the other one, under the existing service?

A. I know the thing we figure on is the freight rate it is going to cost, and the most direct routes and the quickest routes. And I am not a freight man, an- that is usually up to the other fellow that is doing the shipping.

Q. How frequently do you specify a routing on your orders going to the north? That is, when you place an order for a bill of goods, do you tell them how you want them to ship it, over what railroad over what line?

A. No..

Q. Do you ever do that?

A. Well, once in a while yes, but most of the time I don't.

Q. Most of the time you don't. Have you ever compared to see what kind of a rate you would get by water to the p-rt of Tampa an*f* then by truck to Sebring?

A. No, they have men for that purpose that are much better equipped than I am.

Q. You are interested in saving transportation costs?

A. Yes, sir.

Q. Have you ever checked that to see whether you could [fol. 1565] save anything over bringing it in——

A. I haven't personally; but as I say, the firms that ship this merchandise, have men for that purpose, and they are much better posted with those rates than I am.

Q. Then you buy your merchandise with the freight prepaid since they are the ones interested in it?

A. Not prepaid, but they do the routing; I don't see it makes any difference who pays the freight; it wouldn't have any bearing on the routing of it.

Q. Have you ever investigated the schedules of the truck lines running into Sebring to see what service they offer now?

A. In what way do you mean?

Q. The schedules that have filed with the railroad commission showing the times they leave Tampa, for example

and arrive in Sebring, during the day? Have you checked that to find out what service they are offering?

A. The only freight we ever get by freight is merchandise we get out of Tampa.

Q. Do you have to pay for the delivery of this merchandise from the rail depot to your store?

A. No, sir.

Mr. Allison: That is all.

Redirect examination.

By Mr. Oven.

Q. Do you get goods from any other place than New York, outside of the State?

[fol. 1566] A. Outside of the State, *ih* yes.

Q. What other places?

A. Merchandise out of Baltimore, and—well, there is no specific place; where we happen to run into merchandise that suits our requirements why that is it.

Q. Does any of it come in now by truck lines, to amount to anything?

A. Not the out of state stuff.

Q. All comes by rail?

A. Yes, sir.

Q. Have you been patronizing the Seaboard—had you been patronizing the Seaboard prior to the operation if this truck line to Seabring?

A. Yes, sir.

Q. For how long?

A. Ever since I have been in Sebring.

Q. Since you have been in business?

A. Yes, sir.

Mr. Oven: That is all; thank you.

(Witness excused.)

Mr. Oven: Just for the purpose of clarifying the situation, I will put this witness on the stand and show what the schedule is going to say.

Mr. R. M. Lewis, was sworn and testified as follows:

[fol. 1567] Direct examination.

By Mr. Oven:

Q. State your name please.
A. R. M. Lewis.
Q. Where do you reside, Mr. Lewis?
A. Tampa, Florida.
Q. What is your business or occupation?
A. Freight agent, Seaboard Air Lines.
Q. For Tampa?
A. Yes, sir.
Q. How long have you been such?
A. You mean at Tampa?
Q. Yes, sir.
A. About four and a half years.
Q. Are you familiar with the operation of the Seaboard Air Line Railway into Tampa? And then across state to Sebring?
A. Yes, sir.
Q. It is contended here by witnesses that the granting of this application, permitting the Seaboard to handle its L. C. L. freight coming in, interstate, by trucks rather than by train, will amount to a saving of time. Will you please tell the Board how that works out and what saving it will be.
A. If my understanding is correct, the Seaboard Air Line has asked for this permit to handle interstate freight on this truck, as intrastate freight, in order to expedite the delivery of both classes of freight to the point of destination [fol. 1568] that these trucks serve; which is only stations that are served by the trains of the Seaboard Air Line Railway. We have two services out of Tampa. We have train service and truck service. Our transfer freight coming in from Chicago, Baltimore and New York is transferred the same day that it is received; it is loaded in the box car, goes to Bartow and Sebring and those places up there. We have a truck that leaves here at six o'clock at night; it is at Sebring at 1:10 the next morning. This freight is placed in the various stations, intrastate freight is placed in the various stations anywhere from seven p. m. until one o'clock in the morning. It is there, ready for the dealer,

the next day. We deliver freight *freight* to our patrons who require that. They elect to pick it up themselves, why then we allow five cents for picking it up. This freight that moves by train gets in there by around noon, whereas out truck is there by 1:10 in the morning; that is at the last station which is Sebring. It is what you were speaking about just now, isn't it?

Mr. Watkins: What is your train schedule?

A. Well, I can't testify to that; I will have to get a trainmaster to do that, because I can't tell you the arrival,—exact time of arrival of those trains at destination; it is all different. However, this train goes to Bartow, gets there around eleven or twelve o'clock the next day.

Mr. Watkins: Well, is there more than one train that [fol. 1569] serves this territory?

A. No, sir.

Mr. Watkins: It is all served by one train?

A. Yes, sir; that is right.

By Mr. Oven:

Q. Now, what advantage is there, so far as time goes, in moving this interstate freight by truck as wished by moving it by train, from Tampa on over?

Mr. Awtkins: Mr. Chairman, the gentleman has just stated he doesn't know what the train schedule is. How in the world can he testify about the saving in time?

Mr. Oven: He can testify as to what advantage there is here on Tampa.

Mr. Watkins: He says he does not know what the train schedule was. I asked him that question.

Chairman Matthews: Mr. Lewis did state that he knew the departure time of the freight train going into that territory from Tampa.

A. Well, this train for Bartow leaves here around five or six o'clock in the morning, I don't know the exact schedule, but approximately that time.

Chairman Matthews: All right.

A. We have witnesses here that can testify as to the exact time of the departure and the exact time of arrival.

Mr. Watkins: That is all in the world I want, is to know something exact, around here, instead of ideas.

[fol. 1570] Mr. Oven: Well, how is freight now handled coming in from New York for Sebring, Winter Park, Avon Park, Lake Wales and Bartow?

A. Freight coming in from New York is loaded in a car; we are not permitted to put it on the truck.

Q. How does it get into Tampa?

A. Well, it comes in various ways. Some of it comes by boat, some of it comes by rail.

Q. Well, that which comes by rail, is it in a carload?

A. No, sir; it is in a package car; l. c. l. package car.

Q. That package car gets here about what time from the north?

A. Gets in any where from six o'clock in the morning until 10 o'clock.

Q. Then, if it is consigned to any of these points in the Ridge Section, it has got to be unloaded from the package car? And put in another package car going to Bartow, has it not?

A. Yes, sir.

Q. And that package car going to Bartow or Sebring would not leave until the next day?

A. That is right.

Q. On the other hand——

Mr. Watkins: Are you testifying, Judge, or asking questions?

[fol. 1571] Mr. Oven: I am asking questions.

Mr. Watkins: I am sorry, I couldn't believe it.

By Mr. Oven:

Q. Suppose you transferred that to the truck, when would it leave?

A. Leave here at six o'clock that night, same day of arrival.

Mr. Oven: Well, that is all for the present; thank you.

A. Do you all want to ask me any questions?

Mr. Watkins: Oh yes.

Cross-examination.

By Mr. Watkins:

Q. Now you stated that on intrastate freight, you move it on a truck, and on the interstate freight you move it by rail?

A. That is right.

Q. To these points. Well, now who determines whether that freight is intrastate or interstate?

A. We determine it by the way bill.

Q. Who? I am talking about names of the men personally.

A. It is done by clerks under my supervision.

Q. Clerks under your supervision?

A. Yes, sir.

Q. What other,—what are the salaries of those clerks?

Examiner Yardley: That is immaterial.

Mr. Watkins: I don't think so.

Examiner Yardley: Well, I think so.

Mr. Oven: What is the question?

[fol. 1572] Chairman Matthews: What are you undertaking to show?

Mr. Watkins: The Supreme Court of the United States has more trouble determining what interstate and intrastate freight is, than anybody I know of, and here we have got a few clerks that are trying to determine that, and divide the freight up as to whether it moves by rail or truck. I think it silly.

Examiner Yardley: The very fact that some of the cases have been taken to the Supreme Court, it doesn't make any difference a man makes, in determining whether a shipment if interstate or intrastate.

Mr. Watkins: Well, it is an indication of whether or not he is educated enough to determine it.

(Discussion off the record.)

A. It is classified by the waybill; that is proof enough. I can't see them all; we have handled several hundred way bills a day.

Q. How much freight moving out into this area is intrastate as against interstate?

A. Well, I would say about a—about 50-50 basis.

Q. Then in tons or pounds, or dollars and cents, how much freight moves to the points involved in this application daily, monthly, weekly, any other period of time?

A. You mean both by rail and truck?

Q. By each, divided; I want it divided.

A. Well, for the first six months,—for the past six months [fol. 1573] of 1938, we handled Tampa proper, some 137,134 pounds.

Q. You mean, to Tampa?

A. No, sir; from Tampa. I am dividing it as between inter- and intrastate.

Q. That was just to the points involved in this application?

A. That is correct, yes, sir.

Q. That is what I wanted to get straight.

A. On the transfer freight, and that is interstate, 1048,390 pounds. We operated to that territory that was for a period of six months, 274 cars.

Q. How many trucks?

A. We operated trucks daily, once a day. This——

Q. Then you operated more cars than you did trucks?

A. Yes, sir. This truck could serve that same territory, and we wouldn't have to operate those cars. That is one of the reasons we are asking for the permit, is to expedite the freight and save car hire. Those cars cost us a dollar a day.

Q. Do you consider your present service out there as a losing service by truck?

A. Sir?

Q. Do you consider your present service by truck, to that territory, a losing service?

A. Yes, it is a losing service.

Q. And unless you get those interstate rights, you will continue to lose money out there operating a truck?

[fol. 1574] A. Well, we have just got two services out there, whereas we could consolidate them.

Q. Well, why are you operating intrastate if you are losing money on it?

A. Well, I don't know that the railroad is actually losing money on the operation of the trucks; I say, we are losing tonnage.

Q. Losing tonnage, but not money. Who are you losing that tonnage to?

A. Well, we are losing tonnage to the car, because we have got duplicate service out there.

Q. Well, who gets the tonnage that you lose?

A. We get the tonnage in the car. I am not in position to testify as to who we lose any tonnage to.

Q. Well, do you think this is going the tonnage handled by the Seaboard?

A. I don't see any reason why it should not. It will certainly give our patrons better service than they are getting now. Let me illustrate that for you.

Q. Go right ahead, as long as you want to.

A. We have got a man over here in Bartow, we will say, Bill Smith Hardware Store. We send him a shipment over by truck, and it is ready for delivery at eight o'clock in the morning. He may be getting a shipment from Baltimore, Maryland, the same man. That gets in there around noon, [fol. 1575] and sometimes later. If that man is hauling his own freight, he has got to come to our station for it to get the shipments, whereas if it was loaded on the truck, he would get all of his shipments at one time. We are asking for the permit for the convenience of our patrons and to expedite the movements of both intrastate and interstate freight.

Q. Does this truck that handled intrastate freight to these points, does it make pick-up and delivery at any of those towns?

A. No, sir.

Q. It only goes to the freight station?

A. Goes to the station.

Q. At how many of the points involved on this schedule you maintain pick-up and delivery service?

A. All of them.

Q. At all points; and what area?

A. What do you mean, at what area?

Q. In what area around Bartow, for instance?

A. Well, the tariff, I don't know how the tariff rate is for Bartow, it is within the city limits.

Q. Is that true of all these points?

A. As far as I know, yes sir.

Q. Within the city limits?

A. Yes, sir.

Q. And that is all down by different trucks?

[fol. 1576] A. Yes, sir; that is done by contract trucks?

Q. And you do not contemplate using this truck that is going to handle the freight from Tampa, in picking or delivering at any of these points?

A. No, sir.

Q. Does the Seaboard Air Line Railway interchange with any truck line?

A. No, sir.

Q. Have you ever approached the truck lines for that purpose?

A. Well, I say we don't interchange: we may have shipment coming in here by truck line that is going to some local station on their line; I will correct that. We do have some business with the truck lines; yes sir; that is some points they don't serve, why then they give it to the railroads.

Q. Have you ever given the truck lines any business to points that you didn't serve?

A. Yes, sir; we have.

Q. You have?

A. Yes, sir.

Q. And that interchange has been satisfactory?

A. As far as I know yes sir.

Q. Do you know anything about the service of the truck lines between here and these points?

A. I do not.

Q. You have never investigated that?

[fol. 1577] A. No, sir.

Q. Have you got any information concerning the cost of operating this truck?

A. I haven't. We have a witness.

Mr. Oven: That will be furnished later; we wan't do it all at once.

Mr. Watkins: I realize that; we have a long, hard pull ahead of us.

Chairman Matthews: Are there any other questions?

By Mr. Watkins:

Q. I want to get something straight in my mind: does the same train out of Tampa serve Auberndale, that serves Bartow?

A. I am not positive about that. We have a witness here that can testify to that for you. We have a train master that has a schedule of the trains; if you will ask him that question he will be more accurate.

Q. Thank you, Mr. Lewis; I was just interested, because this map does not look right to me.

A. I can testify to the schedules approximately, but I don't know the exact schedule.

By Mr. Allison:

Q. Mr. Lewis, I understood you to state that if a man in Bartow, for example, had a shipment of intrastate freight and a shipment of interstate freight arriving the same day, under your present method he would have to make two trips to the depot to pick up his two shipments?

[fol. 1578] A. Yes, sir.

Q. If he has his place of business within the corporate limits of Bartow, wouldn't you deliver those shipments to him?

Examiner Yardley: He said, if he wanted to haul it himself.

A. That is up to the consignee to choose which way he wants it. We will deliver it for him or he can come after it. I would like to state just a little further here; you take, for instance, a shipment moving out of Tampa, that we get on a Friday; we haven't train service out of here on Friday, to this section; but we do have a train out of here Saturday, which does not get over there until Sunday. That freight is delayed until Monday morning. We have truck service out of here on Friday, and if we could put this interstate freight on the truck it would expedite it three days, instead of 48 hours.

Q. Is that the only day you don't have a train?

A. During the week, yes sir.

By Mr. Watkins:

Q. Mr. Lewis, do you know whether or not you operate any other place outside of Florida?

A. Outside of Florida—no, sir; I do not.

Q. Will anybody be on the witness stand that can testify to that?

Mr. Oven: I don't know as there will. I am willing to admit in the record that there are certain operations outside of Florida; not a connected operation.

Mr. Watkins: All right; as long as we can stipulate it, [fol. 1579] Judge, it will be all right; I wanted the record to show it.

(Witness excused.)

MR. J. G. LEVERETTE was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name please.
A. J. G. Leverette.
Q. Where do you reside, Mr. Leverette?
A. Sebring, Florida.
Q. What is your business or occupation?
A. Station agent for the Seaboard.
Q. How long have you occupied that position?
A. Almost eleven years.
Q. You are familiar in a general way with the purpose of this application pending here now before this Board, wherein the Seaboard seeks a certificate from the Interstate Commerce Commission to handle, as between Tampa, and Sebring and intermediate points, interstate freight, are you not?
A. Yes, sir.
Q. Are you familiar with the arrival of the trains into Sebring, from Tampa?
A. Yes, sir.
Q. When does the train arrive there?
A. This freight comes into Sebring—to West Lake Wales on the regular train; it is set out there and comes to Sebring [fol. 1580] on a switching, leaving West Lake Wales anywhere from five p. m. to seven p. m. arriving at Sebring anywhere from six thirty to ten thirty.
Q. P. M.?
A. Yes, sir.
Q. Would the handling of that same less than carload freight by the truck, from Tampa, expedite the service into Sebring?
A. Yes, sir.
Q. To what extent?
A. Well, the freight that leaves Tampa this afternoon, when our train leaves—If it could come on the bus, it would

be there at one o'clock in the morning for delivery tomorrow morning.

Q. You said, bus, you mean truck?

A. I meant truck?

Q. Proceed now.

A. If it could come over on the truck, we would deliver it at eight o'clock in the morning, whereas if it comes on the train, we will get it tomorrow evening some time and deliver it the next morning around eight o'clock.

Q. Do you feel that that would be a convenience to shippers, a necessity to them, to expedite that service?

A. Yes, sir.

Q. Have any of them said they would like to have it, as far as you know?

[fol. 1581] A. All that I have discussed it with, yes sir.

Q. You only have one daily freight service in Sebring by rail?

A. That is right.

Q. And one daily intrastate truck service, by truck?

A. That is right.

Q. Both operated by Seaboard?

A. Yes, sir.

Q. Now do you have any outgoing business by truck or train?

A. By both, yes sir.

Q. L. C. L.?

A. Yes sir.

Q. Interstate or intrastate?

A. Both. If we could send the Interstate freight on the truck it would certainly facilitate the handling of the carload freight at Sebring, because of the facilities there.

Q. Have you pick-up and delivery service to Sebring?

A. Yes, sir.

Q. Do you also give the consignees the option of hauling their own goods at a reduced price—allowance for that purpose?

A. Yes, sir; we make an allowance for that purpose, to those who want to avail themselves of it.

Q. Now, if a shipment got in by truck from Tampa, direct, shipped from Tampa, in the morning, and an interstate shipment got into Sebring at noon, or in the after-

[fol. 1582] noon, the merchant would have to make two trips to the depot to get all that stuff, if he was handling it himself, would he not?

A. Yes, sir; but the shipment wouldn't get—the interstate shipment wouldn't get to Sebring in the afternoon; it would be in the evening, and delivery could be made not earlier than the next morning.

Q. When would it get there by truck? At night?

A. At 1:10 p. m.

Mr. Oven: That is all.

Cross-examination.

By Mr. Allison:

Q. Mr. Leverette, this consignee wouldn't have to make two trips, he could wait and pick it all up after the interstate shipment arrived, couldn't he?

A. Yes, sir; he could pick it up once a week.

Q. So there wouldn't be any compulsion for him to make two trips a day unless he just wanted to?

A. No.

Q. You have been in Sebring eleven years?

A. Yes, sir.

Q. With the Seaboard Air Line?

A. Yes, sir.

Q. Do you know of any reason why this scheme was not proposed before this date, if it was valuable to the public?

A. I don't know, really don't.

Q. These truck lines have been operating down there since [fol. 1583] shortly after the boom, 1925, haven't they?

A. Yes, sir.

Mr. Allison: That is all.

A. I won't say, 1925; I wasn't there then.

Q. I say, shortly after that time?

A. I went there in '28.

Q. They were there operating, when you arrived?

A. I found them there, yes sir.

Mr. Oven: Found the railroad there also, didn't you?

A. Yes, sir.

Mr. Oven: That is all, Mr. Leverette.

By Mr. Watkins:

Q. I would like to ask a couple of questions. How much freight, l.t.l. originates at Sebring?

A. Very little.

Q. Very little. Do you know how it is divided between inter and intrastate traffic?

A. Well, most of it is interstate.

Q. Interstate?

A. Yes, sir.

Q. What is the nature of it? Mr. Leverette.

A. Well, you know Sebring is a tourist town; these people drive down there in their cars and ship their stuff,—canned goods and dried beef and potatoes from up in New York State; and when they start back, they ship blankets and things like that; and we have a lot of that stuff.

[fol. 1584] Chairman Matthews: I think you inquired about l.t.l.; you mean l.c.l., don't you?

A. You are talking to a railroad man.

Mr. Watkins: Well, I prefer to call it l.t.l. Judge.

A. Well, I inferred that you meant l.c.l.

Examiner Yardley: Thank you sir; that is all. Next witness.

Redirect examination.

By Mr. Oven:

Q. Mr. Leverette, have you caused to be prepared a statement for the month of October, November and December, 1938 of interstate freight received at Tampa, on a package car, all rail movement, Tampa-Sebring package car?

A. Yes, sir; I believe Mr. Peterman has that.

Q. Is this the original of that?

A. That's it.

Q. Are these typed copies?

A. I got it out in a hurry and just mailed statements——

Examiner Yardley: Just answer the question.

A. Yes, sir; that seems to be it.

Mr. Oven: We offer that in evidence, as Exhibit No. 2.

Recross-examination.

By Mr. Allison:

Q. Mr. Leverette this statement covers October, November and December, 1938. I believe you stated that Sebring was a tourist town?

A. Yes, sir.

[fol. 1585] Q. The population there is large- increased during the winter months, over the summer months, is that not correct?

A. Yes, sir.

Q. Then what proportion does this statement bear to what might appear for the months from April first through September 30th? In other words, would,—the movement would be considerably less during those months, would it not?

A. Yes, I guess it would, on the outbound business.

Q. Have you attempted to strike an average for the year of 1938, for the average month?

A. No, sir.

Q. Now, in what proportion would you say that these three months you have selected, are larger than the three preceding months? July, August and September?

A. That is inbound business. We weren't discussing outbound business; that is inbound. Well, there are more people,——

Q. There are more people there during the winter months, to receive freight coming inbound, than there are during the rest of the months; isn't that correct?

A. I wouldn't say that. We have chemicals for fertilizer; fertilizer complete; we have farm implements.

Q. You are speaking about carload, or less carload?

A. Less carload.

Q. The point in what I am getting at, Mr. Leverette, is simply this: Does your inbound business contain ratio [fol. 1586] throughout the year, or doesn't it fluctuate?

A. It fluctuates, yes, sir.

Q. Then it would be more in the winter than in the summer?

A. Yes, sir.

By Mr. Bliss:

Q. Mr. Leverette, will you explain these shipments shown as being handled with no revenue?

A. Prepaid.

Q. Then you claim—well now——.

A. The young man that made it, went along the same principales as that we make up our freight shipments; he put down what affect my account there, and left the prepaid shipments out.

Q. Well, then that column reading Revenue, should read "Total collect," shouldn't it?

A. Yes, that should mean the collect freight.

Q. And in a case of a shipment to Chicago, you are including in there all the charges from Chicago to Sebring?

A. All of the earnings, yes sir.

Q. Probably—you wanted to make that correction in this exhibit?

A. Yes, I would like to have it understood that those—dashes there represent that the freight has been prepaid on the shipment.

Q. Well, you can simply change the entire column to read, "Collect charges."

Mr. Oven: This column shows revenue collected at Sebring [fol. 1587] is that right?

A. That is revenue collected at Sebring.

By Mr. Bliss:

Q. That includes the revenue of connecting lines as well?

A. Yes, sir; every carrier is included in that.

Q. I see no shipments on this sheet from New York or Baltimore.

A. I instructed to leave those off,—all eastern business; going on the hypothesis that it would be transferred at Jacksonville.

Q. Well, is that how it is usually handled?

A. Well, a great deal of it is; and I wanted this statement to reflect as near as I could the actual conditions. You see, this is all western freight.

Examiner Yardley: I don't understand why you make that statement to Jacksonville. What happens at Jacksonville?

A. Well, there is a great deal of that stuff comes Clyde-Mallory to Jacksonville; a great deal of it comes ocean steamship company to Savannah.

Examiner Yardley: But nevertheless picked up by Seaboard at these points, isn't it?

A. Yes, sir.

Q. Mr. Leverette, you have a direct on the Seaboard from Jacksonville to Sebring, without going through Tampa, haven't you?

[fol. 1588] A. Yes, sir; and that is what I had in mind when I omitted eastern business.

Q. Is there a Jacksonville to Sebring package car?

A. Yes, sir.

Q. What schedule does that move on?

A. It arrives in Sebring at the same time as the package car from Tampa arrives, on the same train, late in the evening.

Mr. Bliss: Will you have a witness who will tell us about that train?

Mr. Oven: Yes. I think we will explain that.

By Mr. Watkins:

Q. I am going to be bawled up. Do you intend to handle any freight moving through Jacksonville on this proposed truck?

A. No, sir; that is the reason I let the eastern business out of it,—business that could move through Jacksonville transfer.

By Mr. Watkins:

Q. Then the only freight that you intend to handle on this truck, would be freight that is broken at Tampa?

A. I don't know just what the intention is.

Q. Well, that is what I am trying to get straight, as to what the intention is. I don't know either; I am just as much in the dark as you are, Mr. Leverette.

A. But I got that statement from Mr. Peterman. I didn't get it up myself, I had it gotten up. I was just [fol. 1589] recovering from a case of flu, and I instructed the young man to leave eastern business off of there; which you will notice eastern business has been left off there.

Q. And that is what I was trying to get at, whether this proposed truck service intends to handle any eastern business.

Examiner Yardley: Let's ask Judeg Oven or one of the officials of the company. How about that, Judge?

Mr. Oven: I will clear that up a little later, sir.

Examiner Yardley: Let's don't leave too much. Can you make a statement right now, whether it will or will not be?

Mr. Oven: As I understand it, eastern business comes down in one package car to Jacksonville, transferred there. The western business, and you might say intermediate points comes down in another package car to Tampa, and is transferred there to the Tampa-Sebring car. And that is the purpose of showing where all these shipments come from.

Mr. Watkins: You haven't answered my question exactly, yet, Judge. On shipments coming into Sebring, they move through Jacksonville, and they would be put in a car at Jacksonville for Sebring, and not to Tampa?

Mr. Oven: That is changed at Jacksonville. But that is,—if it is in a car that goes on to Tampa, it would have to be changed at Tampa. Everything the Seaboard handles down here from the north or the west, comes through Jacksonville. There is where you are confused.

[fol. 1590] Mr. Watkins: But there is some freight then that will move from Jacksonville, or through the point of Jacksonville, to Sebring, without ever going in this proposed truck service?

Mr. Oven: There may be, yes.

Mr. Watkins: Now, why would some be handled that way, and the other be handled through Tampa; I just can't see it.

Mr. Oven: Because of the fact that if a car goes on to Tampa, and you can't break bulk there, so to speak; whereas in the other instance, both,—bulk is broken at Jacksonville. When I say bulk,—it is a package car.

Examiner Yardley: Then you have a package car from Jacksonville set out at Sebring; there is no use for the truck line at that point.

Mr. Oven: As to that, the other comes rights on through to Tampa; that is what we want to save time on. To use a technical term, certain package cars are billed on Tampa, other package cars are billed on Jacksonville; that is what causes the difference.

By Mr. Allison:

Q. May I ask the witness: Mr. Leverette, do you know the route that this truck will follow from Tampa to Sebring, with reference to the town of Auburndale?

Examiner Yardley: Now, gentlemen, this witness here was called to show, as I understand it, the necessity for the operation at Sebring. Is that correct, Judge?

Mr. Oven: Yes, sir.

[fol. 1591] Examiner Yardley: So any operation conditions and so forth we may leave to the traffic manager or some official.

Mr. Allison: Are you going to have him here?

Mr. Oven: Yes, sir; the schedule shows.

(Witness excused.)

Mr. Oven: The three witnesses from Sebring will be excused.

Mr. A. O. Kinsey was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, please.

A. A. O. Kinsey.

Q. Where do you reside?

A. Avon Park, Florida.

Q. What is your business or occupation?

A. Station Agent.

Q. What kind?

A. Seaboard Air Line.

Q. How long have you occupied that position?

A. 14 years.

Q. Are you familiar with the present intrastate truck service from Tampa to Sebring?

A. Yes, sir.

Q. When does the truck reach Avon Park?

A. Around twelve o'clock.

Q. Daytime or at night?

[fol. 1592] A. At night, midnight.

Q. Do you know when that leaves Tampa?

A. No; I understand, six o'clock.

Q. When does the freight train, or package car get to Avon Park from Tampa?

A. Around five-thirty to six o'clock.

Q. Morning or afternoon?

A. Afternoon.

Q. In the afternoon?

A. Five thirty to seven thirty p. m.

Q. Have you prepared a statement of intrastate shipments? You have not, have you?

A. No, sir.

Q. Would the permitting of this truck service to handle interstate freight which goes into Tampa by package car, be a convenience to the merchant in your town?

A. Yes, sir; it would be a saving of 24 hours.

Q. 24 hours?

A. Yes, sir.

Q. Do you find that they desire it?

A. Yes, sir; all—I have mentioned it to some of them, they are interested in it and would like to have it. I think the stuff that comes in the box car, comes in there I will say around six o'clock.

Q. In the afternoon?

[fol. 1593] A. Six p. m.; if that same shipment was moved by truck line, why it would have been there just 24 hours—been there at midnight and delivered the morning before,—24 hours sooner. We have a shipment in the warehouse Saturday night, by our train, that was loaded at Tampa Friday night, we got it Saturday night. If that shipment could have moved—it from St. Louis; if it could have moved on to us Friday night, we would have delivered it Saturday morning.

Q. By your truck?

A. If it came in on our truck Friday with some other stuff that came in from Tampa, we would have delivered it Saturday morning; but that shipment had to be delivered this morning at eight o'clock, 48 hours later than it would have been if it had been moved into Avon Park Friday night.

Q. Do you have pick-up and delivery service at Avon Park?

A. Yes, sir.

Q. Do you allow a rebate to those who haul their own goods?

A. Yes, sir.

Mr. Oven: Take the witness.

Cross-examination.

By Mr. Watkins:

Q. What happened to that package car for 24 hours that got lost? You said it started out Friday night and got in Saturday night?

A. 24 hours, our stuff loaded at Tampa Friday night, [fol. 1594] we don't get it until Saturday night.

Q. Where does it go?

A. I couldn't tell you.

Q. You don't know what happens to the box car in the mean time?

A. Moves in train service to West Lake Wales, then it is picked up and handed to Avon Park.

Q. How long does it take to get to West Lake Wales?

A. I couldn't tell you; I haven't checked the schedule.

Q. You don't know what happens to the car in the meantime?

Mr. Oven: In putting the original question to you, the gentlemen knows the freight train doesn't leave until the next morning, although it is loaded the night before.

Mr. Watkins: You testify, Judge, and tell us all about it. I want the record to show what happens to it.

Q. How does freight from Jacksonville to Avon Park, move?

A. In box car.

Q. Well, over what route?

A. Seaboard.

Q. Through Tampa?

A. No, sir.

Q. Well, through what point?

A. Direct through Jacksonville to Tampa, down through Ocala.

Q. From Jacksonville——

A. West Lake Wales and into Avon Park.

[fol. 1595] Q. In other words, freight from Jacksonville to Avon Park would move down to the line of the Seaboard through Wildwood?

A. That is right.

Q. And Lakeland?

A. No, sir; Not Lakeland; through Wildwood, Coleman, Winter Haven, West Lake, and Avon Park.

Q. And wouldn't go through Tampa?

A. No, not necessarily.

Q. So then freight from the east that was brought into Jacksonville would get to Avon Park over that route we have just described?

A. If it was loaded on Jacksonville?

Q. Well, I suppose it would be loaded that way, I don't know. You mean it might run some other route through Tampa?

A. There is probably package cars that are loaded at different points. I don't have that information—through Tampa, loaded on Tampa.

Q. You mean then there would be some freight from Jacksonville to Avon Park, that moved through Tampa?

A. I haven't had any.

Q. You don't think it would do that?

A. No.

Q. Is there truck service from Jacksonville to Tampa? by the Seaboard?

A. No.

[fol. 1596] Q. They don't have any through truck service?

A. No.

Q. What through truck service have you got? Do you know?

A. From Tampa to Avon Park.

Q. What?

A. Tampa to Avon Park.

Q. That is the only one you know of?

A. Yes, sir.

Q. How much freight originates at Avon Park going outside of the State of Florida?

A. We don't have—I would say, a small amount.

Chairman Matthews: You are speaking about l. c. l.?

Q. That is right, l. c. l.

A. Small amounts.

Chairman Matthews: At great deal of freight originaes there in car lots?

A. Yes, sir; plenty.

Q. I am talking about l. c. l.

A. L. c. l., that is what I am talking about.

Q. And about how much comes inbound? have you got any? Have you got any extimate at all, like this gentleman from Sebring gave us? Have you made any check similar to that?

A. No, I didn't make that up.

Q. And you have got no idea. How does Avon Park compare with Sebring, is it as big a station, or larger, or what?

[fol. 1597] A. I imagine about the same.

Mr. Watkins: That is all I have.

By Mr. Allison:

Q. Mr. Leveretts, how many common carrier truck lines at present are serving the town of Avon Park?

A. Three, I believe.

Q. What are they?

A. Central, St. John's and Hunt.

Q. Are you familiar with their schedules?

A. No, sir.

Q. This shipment you spoke of as being delayed in Tampa and not reaching the consignee until Monday, that was partly because you have no train on Friday, isn't that correct?

A. No; you see it just gets to where the stuff that moves through Tampa, is 24 hours, when that is put in a box car, we don't get it until the next afternoon, as I say, about six o'clock. But if it moves on this truck, it gets into Avon Park about midnight, and delivered the next morning about eight o'clock; which, if it moved in the box car it wouldn't get there until five or six o'clock too late for that day's delivery; which gives it 24 hours delay.

Q. You spoke of one shipment which was loaded in Tampa on Friday, didn't reach you until Saturday?

A. Saturday night.

Q. Delivered Monday?

A. That is right.

[fol. 1598] Q. When did that shipment arrive in Tampa, do you know?

A. I don't know that.

Q. Is there any practical reason why the Seaboard could not have turned that freight over to one of these truck lines and let them deliver it Saturday morning to the consignee in Avon Park?

A. Yes, sir; it was routed Seaboard.

Q. Routed Seaboard?

A. Yes, sir.

Q. But the public if they knew that they could make that interchange there, they would get their freight just as quick as by this proposed truck, wouldn't they?

A. Well, I don't know whether they would or not.

Examiner Yardley: You don't know what their services are, do you?

A. No, sir.

Examiner Yardley: All right, thank you sir, that is all. Next witness.

(Witness excused.)

Mr. I. T. Ford was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name please.

A. I. H. Ford.

Q. Where do you reside, Mr. Ford?

[fol. 1599] A. Avon Park, Florida.

Q. What is your business?

A. Well, I am Gulf Distributor, Chevrolet automobile dealer, a little of everything.

Q. Do you receive interstate freight in Avon Park?

A. Yes, sir.

Q. Do you receive any by rail?

A. Yes, sir.

Q. From where do you receive freight, Mr. Ford? Coming interstate?

A. Well, various places, one place and another; depends on where I buy. I buy from various concerns. It is mostly from Atlanta, Michigan; and as I say it just depends on where I buy the material.

Q. Does any of that come in by Seaboard Air Line Railway?

A. Yes, sir.

Q. Are you familiar with this application where they are seeking now to obtain to handle interstate freight by truck from Tampa to Avon Park?

A. All I know is what I have been told.

Q. Do you think that would be a convenience to your business?

A. Yes, sir.

Q. If the testimony here shows that it would amount to a saving of 24 hours, approximately on goods shipped from the west, or say Tennessee, anywhere out there, billed [fol. 1600] on Tampa would that be a convenience to you?

A. Yes, sir.

Q. Would it be a convenience to the other people there?

A. Yes, sir.

Q. Is there anyone else here with you from Avon Park?

A. No, sir.

Mr. Oven: Take the witness.

Cross-examination.

By Mr. Watkins:

Q. Do you receive any shipments by truck?

A. Yes, sir.

Q. Which lines?

A. I think all of them that come into Avon Park.

Q. How many are there?

A. Well, as I recall, there is about three.

Q. Do you mind naming them?

A. Hunt Truck Line is one of them. St. John's and Central, did come in.

Q. Is their service satisfactory?

A. Yes, sir.

Q. How does the majority of your freight move? Does it move by water into Tampa?

Examiner Yardley: You are speaking about small quantities less truckload?

Q. Yes, less than truckload freight.

A. No, very little freight that I receive, by water, as I [fol. 1601] know—as I recall.

Q. Do you get any shipments from Atlanta all the way by truck?

A. I believe I have had some.

Q. Is the service satisfactory?
A. Yes, sir.

By Mr. Allison:

Q. Mr. Ford, are your new cars, I believe you stated you are the Chevrolet dealer?
A. Yes, sir.
Q. Are your new cars all shipped from Flint or from some assembly point?
A. Well, most of them come from Atlanta.
Q. And do they come by rail, or do they come by——

Examiner Yardley: Well, they don't come less than carload?
A. No, sir.
Q. Do you get any by these contract caravans carriers?
A. No, sir.
Q. They all come by rail?
A. Yes, sir.
Q. What about the—you are the Gulf Oil distributor there?
A. Yes, sir.
Q. How is that gasoline sent in? by tank car? Or by boat to Tampa, or by truck to Avon Park?
A. Well, part of the time during the year it comes——

[fol. 1602] Examiner Yardley: Is that material to the disposition of this case? How that gets in,—how gasoline gets in?

Mr. Allison: It has some bearing on the witness' testimony as to the necessity of this service.

Examiner Yardley: Well, there aren't any of these truck lines hauling gasoline, are there?

Mr. Allison: Plenty of the companies; there are about three.

Examiner Yardley: Tank truck?

Chairman Matthews: Not in tank cars; none of the common carrier truck lines.

Mr. Watkins: Contract carriers, Judge.

Chairman Matthews: And the common carriers haul in drums.

Mr. Watkins: That is right.

Examiner Yardley: Go ahead and answer the question.

By Mr. Allison:

Q. The question is, some of this gas comes to Tampa by boat and some by contract truck is delivere- to Avon Park? Isn't that right?

A. Yes.

Q. Just roughly what proportion comes in by rail tank cars; and what proportion comes the other way?

A. Well, in summer time all comes by truck, for about two or three months, but the company does it themselves. I would say outside of two or three dull months we have, it comes by rail—all except what comes in drums lots, which [fol. 1603] is oil and various quantities that wouldn't be large enough to ship by tank car.

Q. Do you know how many daily schedules these three truck lines have now? In and out of Avon Park?

A. Do I know what?

Q. How many schedules they have, per day.

A. Well, as I understand it, they all come in in the morning—or some time from seven thirty on; I don't know exactly their schedules.

Examiner Yardley: I think we can doubtless save some time, you are doubtless going to put that on by your own witness. He has testified the truck service was satisfactory; I don't know what more you want.

Mr. Allison: May it please the Commission, it occurs to me that it always has a bearing on the question of public convenience and necessity, if the witness was well informed enough to know what services are available. If they are not familiar with the services now available, then their testimony is subject to comment, because their judgment on public convenience and necessity is affected accordingly.

Examiner Yardley: He has testified three truck lines operated into the city.

Mr. Bliss: And that the service is satisfactory; that is all you want.

Chairman Matthews: Mr. Allison asked if he knew how many each of them had per day, the schedule: if you can answer it.

[fol. 1604] A. One schedule each day; one truck each day, as I understand it.

Mr. Allison: That is all.

(Witness excused.)

(Brief informal recess was had at 11:35.)

Mr. H. J. Ellis was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, Mr. Ellis.
A. H. J. Ellis.
Q. Where do you reside?
A. Lake Wales.
Q. In what business are you engaged, if any?
A. Truck business.
Q. How long have you been engaged in that business at Lake Wales?
A. 16 years.
Q. Do you have occasion to receive interstate shipments by Seaboard Air Line into Lake Wales?
A. I do.
Q. Do you know how they are routed or do you not?
A. Well, the only shipments we get that way is over the Seaboard into Tampa, and pick-up trucks into Lake Wales.
Q. Shipped into Tampa and then transferred?
A. Yes.
[fol. 1605] Q. Do you get it in less carloads or by train?
A. Truck.
Q. You don't get any interstate shipments there that way, do you?
A. You mean, truck?
Q. Yes.
A. It is my opinion that I have had shipments that way; not through the Seaboard.
Q. Not through the Seaboard?
A. No.
Q. Well, now as to the freight assigned to the Seaboard, how do you get that?
A. When it is consigned to the Seaboard?
Q. Yes, sir; turned over to the Seaboard for delivery to you?

A. Well, we have had it both ways. Up until some time ago our freight came by rail; and whenever they put on their service, then we gave them permission to have it come that way.

Q. Well, you don't have any shipments from outside of the State by this truck do you?

A. No.

Q. You do get it by rail?

A. Yes, sir.

Q. All rail into Lake Wales?

A. Yes, sir.

Q. Do you know the purpose of this application here of [fol. 1606] the Seaboard, asking authority to handle Interstate shipments along this line on this truck?

A. I am, I think I am clear on that.

Q. Would that be a convenience to you?

A. Yes, we get shipments from Chicago once and twice a month, which I think through their service would speed up our getting the goods quicker.

Q. Well, is speed necessary to your business?

A. Well, I think so.

Q. Would it affect others in Lake Wales, likewise?

A. Well, it is my opinion it would affect anybody, that, if they want the merchandise, and of course we are all anxious to get our merchandise when we buy it.

Q. You of course have all truck service through Lake Wales do you not, too?

A. Oh yes.

Q. Competing truck lines?

A. Yes.

Q. How long have you been dealing with the Seaboard Air Line as a carrier?

A. As a carrier—probably—you mean the railroad company?

Q. Yes, sir.

A. Oh, since it has been there, ever since I have been in town.

Q. Outside of this delay, you find the service satisfactory?

A. You mean, the Seaboard Railroad Company service?

[fol. 1607] Q. Yes, sir.

A. Yes.

Q. Would you like to see this application granted so that stuff could be transferred from the package car at Tampa, to the truck, and reach Lake Wales earlier?

A. I think I would.

Q. How much earlier do you think that would reach you?

A. That I couldn't say exactly; I am not altogether clear. Of course I know that we have had awfully good service. Now don't misunderstand me, we have had service from all of them; all give us service. But the Seaboard Air Line Railroad Company—I mean the pick-up trucks have given us very good service. Now, as to their schedules, when they come in, when the merchandise is received in the,—I don't know anything about when it comes to Tampa. But I do know that there their service has been very good.

Q. Well, now if it gets in there by package car at night, you don't get — until the next morning, do you?

A. I don't know; I don't get it until the next day.

Q. And if the freight got into Tampa this afternoon, was loaded on the truck tonight, you would get it in the morning?

Mr. Watkins: Now wait a minute: Mr. Chairman, this gentleman has testified he didn't know anything about when the freight arrived at or left Tampa; and he has testified that the service was good, and I believe that is as far as he [fol. 1608] can go. Now the Judge is attempting to go on and put the words in his mouth, which he has already stated he knew nothing about.

Mr. Oven: I am asking him if that was the case; and I propose to prove by other witnesses that such is the case.

Chairman Matthews: I think he can answer the question as the Judge put it, in proper form.

Mr. Oven: Read it to him, Mr. Reporter.

(The question was read.)

A. At Nine o'clock.

Examiner Yardley: He wouldn't know whether he would get it in the morning or not, Judge.

Mr. Watkins: That is the point I was arguing.

By Mr. Oven:

Q. Do you know when the truck gets in there sometimes from Tampa?

A. Gets in there at eight o'clock, and we get our freight between eight and nine.

Q. Eight in the morning?

A. I do not know when the truck gets there. I know—the truck gets to Lake Wales at night, it is put into the Sea-

board depot, and their trucks deliver it to us next morning; I do know that.

Q. The pick-up and delivery truck delivers to you the next morning?

A. Yes.

Q. The Seaboard truck from Tampa gets in some time [fol. 1609] during the night?

A. During the night.

Q. Now, if the freight comes in a package car: When does that reach Lake Wales?

A. If it comes in a package car?

Q. Yes, sir.

A. I couldn't tell you.

Q. You don't know when that gets there?

A. No. You mean, comes in a package car to Lake Wales?

Q. Yes, from Tampa?

A. No, I don't know; I don't know how long it takes a freight car to get out there; I couldn't tell you that.

Q. Well, now assuming for the sake of argument that it,—the shipment, interstate reaches Tampa one afternoon, or during the day and had to be transferred to package car that left Tampa the next morning and did not reach Lake Wales until noon of that day; would that be as convenient and necessary to you, as if the shipment reached the,—Tampa in the afternoon and was loaded in the truck and reached Lake Wales in the night and was delivered to you the next morning?

A. Well, it is always much more convenient for us to get our freight in the morning than it is in the afternoon. Now here is what I mean by that; lots of times we get freight by truck lines, that deliver to us at night, see, I don't say they are responsible for that, but many times it does come in, [fol. 1610] and we unload freight there after night, from the truck. You see what I mean. I don't — when they get it, it may not be their fault, see. We have had mighty good service from all truck lines, and it is my opinion that most of the trucks will give it to you as quick as they can. But it — more convenient for us to have freight delivered in the morning than it is in the afternoon or night.

Q. No matter who delivers it?

A. Yes.

Mr. Oven: All right, take the witness.

Cross-examination.

By Mr. Allison:

Q. Mr. Willis you speak of freight being unloaded at night by the truck line. Is that the same freight which was ordered by,—ordered from Tampa, that same day?

A. No, we never get any freight from Tampa that is loaded—that I buy—if I buy merchandise this morning, I never get it that day by freight or truck or any other way.

Q. Are you familiar with the schedules which the truck companies have, running into Lake Wales now?

A. Well, I am not altogether familiar. The Seaboard pick-up truck comes in there every morning. The Hunt Lines come in there twice a day. The Star Lines and Central Truck Lines, I see them sometime during the day, but when they get there I don't know.

Q. Dl you ever see the Great Southern Truck Line there?

A. Yes, I think I have.

Q. You don't know though when they are supposed to [fol. 1611] arrive and depart?

A. No, I do not.

Q. Are you aware that some of those truck lines, either direct or by connecting carriers, run on up through Atlanta towards the west,—to Chicago?

A. I understand they do.

Q. So that you could get an interstate shipment by truck over that route?

A. I am not positive, but I think I have had shipments from Atlanta by truck. And I believe I could show you some freight bills, see?

Q. Now, Mr. Ellis, when you place your orders, do you specify how you want your merchandise shipped?

A. Yes.

Q. You do?

A. Yes.

Q. And you specify the Seaboard?

A. Yes, sir.

Q. This same truck that runs from Tampa to Lake Wales, that is the Seaboard truck, that is not the same truck that delivers your merchandise to you, is it?

A. From Tampa, to Lake Wales?

Q. Yes, sir.

A. You mean, the Seaboard truck?

Q. Yes.

[fol. 1612] A. Well, now, I imagine that is the same truck that delivers the freight in Lake Wales; but they never deliver any freight to me.

Q. But it is delivered by the Seaboard pick-up truck, from the depot. That is not the truck that runs over the highway from Tampa to Lake Wales, but it is a pick-up truck in Lake Wales?

A. Yes, sir.

Mr. Oven: You haven't tripped anybody yet.

Mr. Allison: I don't appreciate that, Judge, I am trying to develop the facts.

Mr. Watkins: I would rather have it this way, Judge.

Mr. Allison: This is my play.

Q. Then the real good service that you are getting, is this pick up truck that they just promoted delivery of that merchandise from the Seaboard Warehouse direct to your place of business.

A. That is right.

Mr. Allison: That is all.

Mr. Oven: Mr. Ellis, that is all.

(Witness excused.)

Mr. R. B. Scarborough was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name please.

A. R. B. Scarborough.

[fol. 1613] Q. And where do you reside?

A. Lake Wales, Florida.

Q. What is your business or occupation?

A. Freight agent.

Q. What company?

A. Seaboard Air Line Railway.

Q. Have you as such agent, prepared *to* caused to be prepared from your records, a statement for October, November and December, 1938, of interstate freight re-

ceived at Lake Wales, Florida? In package car, all rail movement in Tampa, Sebring package car?

A. I have prepared a statement on shipments delayed through Tampa.

Q. Shipments delayed?

A. Yes, sir; that is it there.

Mr. Watkins: Is that all the shipments?

A. Shipment delayed, yes sir; from the Tampa interchange. In other words, all the freight moved through Tampa is interchange.

Q. I know that. But does this statement represent all of the freight which moved, or just that which was delayed?

A. Just the freight that moved through Tampa. You see we have a Jacksonville Package car as well as a Tampa package car, see? And this is delayed twice through the Tampa——

Q. Well, does that statement comprise all of the movements all of the shipments, from or through Tampa?

[fol. 1614] A. Yes, sir.

Q. To Lake Wales?

A. That's right.

Q. All right, that was prepared under your supervision and direction was it?

A. Yes, sir.

Mr. Oven: We offer that in evidence as Exhibit No. 3.

Q. When does the package car operated by rail service, reach Lake Wales from Tampa?

A. From five to six p. m.

Q. When does it leave Tampa, do you know?

A. During the early morning some time.

Q. When does the truck that handles intrastate freight from Tampa to Sebring—Tampa to Lake Wales, reach Lake Wales?

A. Oh, around 10 o'clock at night.

Q. 10 o'clock at night?

A. Yes, sir.

Q. If the Seaboard is permitted to handle by this truck, the freight movement moved into Tampa by package car, and then Tampa-Sebring package car, would that expedite that service, and if so, to what extent?

A. 24 hours at least.

Q. 24 hours at least?

A. Yes, sir.

Q. Have you discussed this matter with the citizens—[fol. 1615] shippers there in Lake Wales?

Mr. Watkins: Mr. Chairman, I haven't objected to that line of questioning before because I thought the Judge would finally get over it. But that of course is hearsay and is not admissable in evidence, as to what he has discussed with other people.

Mr. Oven: Well, I will withdraw that question. Have you made any survey of the merchants in Lake Wales for the purpose of determining whether or not this service would benefit them?

Mr. Watkins: Now before you answer that question,—I think he ought to give the details of how he made the survey and so forth. If we are going into this, let's go into it right. I don't think we ought to do it.

(Discussion off the record.)

A. Yes, sir; I have.

Q. How did you make that survey, Mr. Scarborough?

A. Well, by questioning my customers you see, checking up on the truck service and comparing with mine. I find some cases they beat me, and naturally I would like to compete with them.

Q. You then have approached practically the,—practically all the receivers in that community?

A. Yes, sir.

Q. Well, from the investigation you made, the conversations you had with these various shippers, what did you find to be sentiment of the community with regard to this service?

[fol. 1616] A. Well, they all want it.

Mr. Oven: Take the witness.

Cross-examination.

By Mr. Watson:

Q. I believe you stated the bus service in there was better than the rail service,—the truck service?

A. In some cases.

Q. From what points?

A. Well, I find in some cases that freight from St. Louis, the trucks can beat us in there, see.

Q. That is all the way through by trucks from St. Louis?
A. Yes, that is right.
Q. And any other points?
A. Well, Louisville and St. Louis, up in that vicinity.
Q. Chicago?
A. No, I can't say about Chicago, but I have some particular business out in the other section.
Q. Have the rails got as good a service from Chicago as the trucks have?
A. Pardon?
Q. Have the rails got as good a service from Chicago, as the trucks?
A. No, sir—from Chicago I couldn't say.
Q. You don't have much freight from Chicago?
A. I don't know your truck schedules into Lake Wales, from Chicago.
[fol. 1617] Q. Then you serve no one from Chicago?
A. I don't know; I know they do beat us sometimes, one and two days from St. Louis and Louisville.
Q. How many truck lines serve——
A. I couldn't tell you all of them, sir.
Q. In the course of your survey did you acquaint the receivers of freight there with the existing truck services?
A. With the truck service? I acquaint them?
Q. Yes.
A. No, sir.
Q. You didn't ask the receivers whether they liked the present truck service?
A. Yes, that was discussed, naturally.
Q. Well, did they or did they not?
A. Well, in some cases I find where the truck service was beating us and they like it, see. In some cases not.
Q. And your purpose in wanting the service is to be able to compete with the existing truck lines?
A. Correct; yes sir.
Q. You feel that there is some freight that is now moving by truck, would be diverted to the rail carriers if they put in this service?
A. No, sir; I am trying to hold the business that is now moving by my line; I don't want to lose any, I want to get some if I can.
[fol. 1618] Q. You don't think this new service that you are proposing *will* here will add any freight to your business?

A. Well, yes, it will—it should.

Q. Well, where are you going to get it from?

A. I will be able to hold and possibly be able to get some of the business from the west.

Q. Then by this proposed service you expect to handle business that is now moving by truck service?

A. Not necessarily, no sir.

Q. Well, how is it moving?

A. It is moving rail to Tampa, and transferred; I mean all the way through rail, through Tampa, and the delay is at Tampa. In other words if we could—this St. Louis stuff we will say comes into Tampa and it is delivered there in Tampa, delayed in getting to Lake Wales. If we could put it on the truck, it will be in there 24 hours earlier.

Q. By speeding up your service 24 hours, do you intend to obtain more traffic into Lake Wales that you are now handling? Or not?

A. Well, that's the object in one way; and to hold what we now have.

Q. In other words, you want to get more traffic?

A. And keep what we have.

Q. And you expect this will give you some more traffic?

A. And keep what we have yes sir.

[fol. 1619] Q. Well, I am assuming that; I don't suppose you are going to lose any of it by speeding up your service.

A. Well, I have to make it that way because it doesn't apply just one way.

Q. Well, it applies both ways; and of course that traffic is now moving by truck, you expect to get?

A. No, sir; the traffic that I am interested in is the traffic now moving all rail. We are trying to build that up.

Q. Suppose you are handling 1,000 pounds of freight a day, by rail——

A. Yes, sir.

Q. When you put in this new service, do you expect to handle any more than a thousand pounds of freight?

A. Well, I couldn't say.

Q. I am asking you for your opinion now; you made the survey in Lake Wales and——

A. I will answer it this way.

Q. All right.

A. If we don't get the service, with what we now have,—if we don't get this truck, then we will lose to the truck lines what we are now handling over the railroad.

Q. That is it. Now the question is, if you will get more freight?

A. I hope so, but I can't say we will.

Q. Does your survey indicate that you will?

[fol. 1620] A. Not necessarily.

Q. Your survey didn't take that into consideration?

A. Yes, it had it in mind.

Q. Well, what was your conclusion from your survey?

A. I have stated, that if we don't get the service, we are going to lose what we now have.

Q. You and I have agreed to that.

A. Well, that is my survey, see.

Q. Now, let's answer the next question; the next question is about new freight.

A. Well, that is entirely——

Q. Just a second, I am asking your opinion on that, I don't care which way your answer it; just say yes or no. Say that you are going to get some new freight, or you don't think you are going to get it.

A. I will put it this way; I hope to.

Q. But you don't know whether you will or not?

A. I don't know, I can't swear to that.

Q. How many package cars a day do you get in?

A. Well, at present I have two; I have a Tampa car and a Jacksonville car.

Q. And does your Jacksonville car move through Tampa?

A. No, sir; direct to Lake Wales—Jacksonville to West Lake Wales, then to me by switch engine service, see.

Q. And the freight that is moving in on the package car [fol. 1621] that moves from Jacksonville, that wouldn't be affected by this proposed service, would it?

A. No, the Jacksonville car covers the stuff from the boat lines as a rule, see; M. & M. T. and the Clyde Line and the eastern stuff. However, some eastern stuff is loaded—in other words, the freight at Richmond, that is where we get it from the other line,—are R F & P and other lines, and these package cars are set up, Tampa and Jacksonville, and sometimes freight for Lake Wales is set in the Tampa car, and then that will delay it that way. But they try to load it into Jacksonville—to Jacksonville, see.

Q. Because you have better service through Jacksonville?

A. Well, not necessarily, but it — more direct.

Q. If it moves through Jacksonville, it would be delayed at Tampa?

A. The eastern stuff, yes, would go into Tampa.

Q. The reason they try to put it in that car, because there is less delay?

A. Well, I guess so. I couldn't say about that. That is an operating feature.

Mr. Watkins: That is all I have.

Chairman Matthews: That car moves over the Coleman Line?

A. Yes, sir; to West Lake Wales.

By Mr. Allison:

Q. Mr. Scarborough, how long has this present service from Tampa to Lake Wales, by the Seaboard been in ef-
[fol. 1622] fect?

Mr. Oven: You mean truck, or freight?

Mr. Allison: This present set up they brought in, the rail and the truck combination?

A. Well, you see the truck only handles intrastate stuff.

Q. That is right.

A. And it has been in about a year, now, see. But the rails—that has been several years.

Q. Well, how does the tonnage that you carry now over this Tampa-Lakeland,—Lake Wales route, compare with the total you carried over the same route a year ago?

A. Why, it doesn't vary; a little from year to year.

Q. Then you haven't been losing any business because you have been running in this method for a year—over a period of a year? Your average is about the same?

A. Well, we possibly are; some stuff out of the west is going to the truck lines on account of the schedules there.

Q. Just one second. Mr. Scarborough, did you ever make a survey similiar to the one you have made now, wherein the public were not in favor of an expedited schedule or expedited service?

A. Were not in favor?

Q. Yes. In other words, don't you always find the public wants all the service they can get, always?

A. Well, some customers, and some not.

Mr. Watkins: That is all.

[fol. 1623] By Mr. Bliss:

Q. Mr. Scarborough, in that freight column on your exhibit here, do these figures include revenue of connecting carriers that performed part of the haul?

A. Yes, sir; that included all revenue, all freight.

Q. In the case of a shipment from Chicago, it would revenue from Chicago to Lake Wales?

A. Yes, sir; that is right.

Q. And not simply the Tampa-Lake Wales portion?

A. No, sir.

Redirect examination.

By Mr. Oven:

Q. Mr. Scarborough, isn't it a fact that this Tampa-Sebring truck service was only begun along the fall of 1938?

A. Yes, that is right.

Q. And the rail service into Lake Wales has been since the Seaboard built in there?

A. Yes, since I have been there.

Mr. Watkins: Without any change of schedules?

A. Practically the same.

Mr. Watkins: For how many years?

A. Nine years I have been there. It will vary a little.

Q. Now you stated on cross examination that the package cars were loaded at Richmond, I believe, for various points in Florida?

A. Yes.

[fol. 1624] Q. And that some freight consigned to Lake Wales got into the Tampa car?

A. That is right.

Q. Through freight from that section was loaded in the Jacksonville car?

A. Yes, sir.

Q. Well now, insofar as the freight that is loaded in the Tampa package car is concerned, if that was held in Jacksonville—the car, so that that freight consigned to Lake Wales could be transferred to the package car going direct

to Lake Wales from Jacksonville, would not the effect be to delay all of the freight contained in the Tampa car?

A. Yes; they would have to set the car out at Jacksonville to work it; it would be delayed.

Mr. Oven: That is all.

Recorss examination.

By Mr. Watkins:

Q. In the course of your survey, Mr. Scarborough, did you give any consideration to a change in your rail schedules, and what effect that would have on the receivers of freight at Lake Wales?

A. Well, naturally we would have in mind improving our service, see.

Q. Well this, did you——

A. But it hasn't been discussed necessarily.

Q. You didn't give consideration to changing your sched- [fol. 1625] ule by rail, in an attempt to give better service?

A. Well, I couldn't see how we could change it.

Q. And that has been true for nine years?

A. What is true?

Q. That you couldn't see any advantage, any change in your rail schedules that would help matters.

A. I said it varied; not much, see.

(Witness excused).

Mr. J. J. Morris, Sr., was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, Mr. Morris, please sir.

A. J. J. Morris, Sr.

Q. Where do you reside?

A. Lake Wales.

Q. How long have you lived there, sir?

A. Went there in '34; about five years.

Q. Are you engaged in business there?

A. Yes, sir; retail hardware.

Q. Do you have any shipments moving into Lake Wales, interstate? By rail?

A. Yes, sir.

Q. How do they move, by what line?

A. Well, I have tried both ways, rail and truck line. The truck line will beat them there.

[fol. 1626] Q. That is interstate freight?

A. Yes, sir; but I don't feel like I am as safe on my claims against a truck line as I am against the railroad. Some of these truck lines are,—I don't know anything about. Now it happens that some of them are, but I have met some of this hook-up that would not be. Some of the states, they wouldn't allow a truck to haul pipe over 18 feet long. Well, that makes it cost us more to buy in 18 foot lengths, than to buy in random lengths; so that is against the truck line.

Q. What rail lines do you patronize?

A. The Seaboard and Coast Line, both. Now I figure this, if we can get this truck service to handle our interstate stuff, that it will beat the trucks in there.

Q. You think it will expedite the present rail service?

A. Yes, sir; I know it will do it.

Q. From where do you get the merchandise that comes in the State?

A. Louisville, Chicago, St. Louis.

Q. Do you know how that moves now and gets to you?

A. It comes in the package car, most of it, to Tampa.

Q. And that is by package car from Tampa to Lake Wales?

A. To Lake Wales.

Q. If the granting of this application would permit the handling of that merchandise on the Seaboard truck, and if the evidence showed that the Seaboard truck leaves Tampa in the evening, say seven or eight o'clock and reached Lake Wales before morning, would it be a conveni-

[fol. 1627] ence to your business?

A. Yes, it will give it to me a couple of days quicker, when I get it.

Q. Would it——

A. You see if we bring it in here and turn it over to truck lines going out of Tampa, regardless of the railroad,—take the present truck lines; if it was turned over to them before twelve o'clock we would get it about five o'clock that evening; if it was turned over to them after twelve, we wouldn't get it until nine or ten the next morning; where the Seaboard could leave here at nine o'clock that night, and we would have it at eight o'clock in the morning. You see it will give the Seaboard about five or six hours quicker

delivery than any possible way you can get it there. It will give us this truck—what I meant if they put this Seaboard truck on, leaving here at six o'clock at night, it will put it in there six or eight hours quicker than we can get it over one of the truck lines that is already running.

Q. Well, if it was delivered from the Seaboard to one of the truck lines, you would have to pay the local rate to the truck lines?

A. Well, even in that case, if they gace us an interchangeable rate, I don't know whether they do that or not, but if they did do it, then the Seaboard truck would beat the other truck in there several hours,—even if they gave us a through [fol. 1628] rate, all the way through.

Q. Well, do you feel then that this service is necessary to the merchant at Lake Wales?

A. Yes, sir; I feel like it will give me a whole lot quicker service.

Q. How about the others?

A. It would give them the same; we are all in the same boat.

Cross-examination.

By Mr. Watkins:

Q. If the Seaboard could accomplish this same speeding up in their service by changing their rail schedules it would serve your purpose just as well, wouldn't it?

A. Yes, but they couldn't do it, with the railroad schedules they have got?

Q. How do you know that?

A. They don't do it.

Q. I say, if they could do it?

A. Yes, but they don't do it, anyhow.

Q. Let's leave it that way; I agree with you they don't do it. That is all.

By Mr. Allison:

Q. Mr. Morris, are you aware that the Nunt Truck Line has a schedule——

A. Oh yes, twice a day.

Q. Leaving Tampa at six a. m. and arriving at Lake Wales at about eight thirty a. m.

A. Yes.

[fol. 1629] Q. That delivery would reach you about as quick as the Seaboard trucks, isn't that correct?

A. Well, it hardly ever gets there at eight thirty; it gets there about ten.

Q. It gets there about ten?

A. Yes, from ten to twelve. It is due in there about eight thirty, but it is generally from ten to twelve when they get there. The same way with the Star Line; Star has two [fol. 1630] trucks goes in there a day, but it is generally—we get a lot of stuff over Star Line, and some over Hunt Line. But it is generally 10 to 12 o'clock before they get there; sometimes 1 o'clock.

Q. By telephoning in time to get it on their noon truck, the trucklines deliver to you that afternoon?

A. Yes, sir; but if I miss their noon truck, then I can have it sent on the Seaboard truck and have it there that night.

Q. What time that night?

A. Comes in there at night and I get it 8 o'clock the next morning.

Q. But if this Hunt Truck Line operates on schedule, they would reach you at 8:30?

A. Yes.

Mr. Watkins: That is all.

Redirect examination.

By Mr. Oven:

Q. Mr. Merris, the gentleman asked you if the Seaboard couldn't change its schedules so as to effect speedier arrival at Lake Wales.

Mr. Watkins: Wait a minute; I didn't ask any such question. I asked him if you could change your schedule and get a speedier service, would he be satisfied with it; and he said Yes. I didn't ask him anything about your schedules.

Q. If the Seaboard should change its schedules so as to give you earlier delivery into Lake Wales, would not that [fol. 1631] break the schedule connection as between Tampa and points north?

Mr. Watkins: But he hasn't testified anything about your schedules.

Mr. Oven: I am asking if it wouldn't do that.

Chairman Matthews: I doubt if he knows that.

A. All I know about it is from the time I get it here in Tampa, the delay is in Tampa.

Chairman Matthews: You are asking a merchant, now, something about your operating schedules.

A. I am going to tell you two reasons that I changed it. One of them was that I had a personal friend that works for the Seaboard Railroad; that was one reason. One of it is I had some stuff brought in over a truckline and it was very —it was L & L—not the L & L, but the Great Southern; and they was very, very dictatory, and I will never have anything shipped over their line. I had some stuff shipped from Atlanta, that I wouldn't accept; I make them take it back to Atlanta and ship by another line. I wouldn't have stuff come over the Great Southern Line.

Mr. Oven: That is all.

Recross-examination.

By Mr. Allison:

Q. Mr. Morris, just a moment: Have you ever had any unpleasant experience with the Hunt Truck Line?

A. No, sir.

Q. With the other truck lines?

[fol. 1632] A. None of them except the Great Southern. I won't have anything over Great Southern Line.

Q. You dealt with an individual that got your fur rubbed the wrong way?

A. Yes.

Mr. Alison: That is all.

Chairman Matthews: If that is all, you may stand aside; and we will recess now until 2: o'clock.

(Witness excused.)

(At 12:25 p. m., hearing recessed until 2: p. m.)

Afternoon Session

2:03 p. m.

(Hearing reconvened pursuant to recess.)

MR. C. X. BALFOUR and MR. J. W. OWENS were sworn, and Mr. C. X. Balfour testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, please.
A. C. X. Balfour.
Q. Where do you reside, Mr. Balfour?
A. Winter Haven.
Q. What business are you engaged in?
A. Hardware.
Q. How long have you been engaged in that business here?
A. Fourteen years.
Q. Do you receive interstate shipments over Seaboard [fol. 1633] Air Line Railway?
A. Yes, sir.
Q. From where do they come?
A. St. Louis, Louisville, chiefly.
Q. You have heard the purpose of this application, that the Seaboard be permitted to handle interstate shipments?
A. Yes.
Q. —by truck from Tampa to Winter Haven, have you not?
A. Yes.
Q. Would that be a convenience to you?
A. Well from what I can hear, it would be.
Q. In what way?
A. Why, quicker delivery.
Q. Are those shipments that you receive via Seaboard routed expressly by you, or by the shippers?
A. They are routed by me.
Q. Routed by you?
A. Yes, sir.
Q. Why do you have them routed via Seaboard?
A. Why?
Q. Yes, sir?

A. Chiefly out of friendship with your agents over there.

Q. Outside of time in delivery, you find the service satisfactory, do you?

A. I find it satisfactory. I have tried the trucklines on [fol. 1634] interstate shipments, but I find the freight shipments more satisfactory in, I might say, that they come in better condition.

Q. Now assuming for the sake of argument that the proof here shows that if this certificate were granted, the delivery into Winter Haven would be stepped up some 20 to 24 hours, would that be a convenience to your business?

A. It certainly would. It would be to every small retailer.

Q. Would be to every small retailer?

A. The large ones too, as far as that is concerned.

Q. Do you feel that the speeding up of that service is a necessity to your business?

A. Is what?

Q. A Necessity: do you think it necessary?

A. Yes, it is very necessary that we get our goods just as quick as we can, because we don't order in large quantities.

Q. And the sooner you get it, the sooner you can sell it and turn over?

A. In certain instances some of them are special orders; it is very necessary that we get them quick.

Mr. Oven: Take the witness.

Cross-examination.

By Mr. Watkins:

Q. Mr. Balfour, if the service by the Seaboard was stepped up 24 hours would it make any difference to you how that was accomplished, whether by truck service or rail service?

A. No; it would not.

[fol. 1635] Q. All you are interested in is——

A. Quick delivery, that is all I am interested in.

Q. And had you rather have that quick delivery by truck or by rail?

A. It wouldn't make a particle of difference, just so I get it.

Q. I think you stated you found the shipments brought in by rail were in better condition than shipments moving in by truck.

A. That is very true on a long haul.

Q. So you would prefer that your shipments not move by truck?

A. On long haul, that is right. Short hauls it doesn't make any difference; they come in good shape, short hauls.

Mr. Watkins: That is all.

By Mr. Allison:

Q. Mr. Balfour, what truck lines have you been patronizing?

A. The Hunt, Central, Star, out of Tampa.

Q. Have you had any difficulty in disposing of any claims with those truck lines, for any of these shipments?

A. No; none whatever.

Q. Have you investigated the service which they offer into Winter Haven now, daily schedules?

A. Investigated it? I use it every day. I use the trucks every day—I mean every week.

Q. Yes, sir; and you are pretty well informed on their connections on up the country with other carriers?

A. No; I mean on intrastate shipments I use the trucks [fol. 1636] out of Tampa; but on long hauls I use the railroad.

Q. Then if the service was available there which would give you this 24-hour speeding-up, and your merchandise arrived in good condition, that would be your main interest?

A. That is right.

Q. Without regard to how it might be worked out to furnish that service?

A. That is right.

Mr. Allison: That is all; thank you, sir.

Redirect examination.

By Mr. Oven:

Q. Mr. Balfour, if this freight that you get from Louisville and other points outside of the state, comes into Tampa in a package car and is transferred from there to a truck operated by the Seaboard Air Line from Tampa to Winter

Haven, would you have any objection to that service in that way?

A. No; none whatever.

Q. There would have to be a transfer anyway, would there not?

A. Yes, at Tampa.

Q. Have they pickup and delivery service in Winter Haven,—the Seaboard?

A. Oh yes.

Q. And if you get your own goods you get an allowance for moving them?

A. That is right.

Mr. Oven: That is all.

[fol. 1637] Mr. Watkins:

Q. Would it make any difference whether this truck out of Tampa was owned by the Seaboard Railroad or owned by somebody else?

A. Wouldn't make a particle of difference to me.

By Mr. Oven:

Q. If the Seaboard and the truckline that Mr. Watkins refers to were operated by different concerns, and the result was you had to pay a local rate from Tampa to Winter Haven, would that make any difference?

A. Why certainly; the rate would enter into it; certainly it would make a difference.

Q. You would prefer then if it is delivered to the rail line, it be delivered by a rail line or its subsidiary truckline?

A. Well at the same rate; it wouldn't make any difference to me just so the rate was the same.

Mr. Oven: That is all.

Chairman Matthews: You may stand aside.

(Witness excused.)

Mr. J. W. Owens having been sworn thereupon testified as follows:

Direct examination.

By Mr. Oven:

Q. Mr. Owens, you have heard what Mr. Balfour has said with reference to this service?

A. Yes.

Q. Do you subscribe to that?

A. Yes, I do. There is one point that I make; this [fol. 1638] gentleman asked if there is any particular reason why I prefer railroad to a truckline. My practice is to use a truckline on all intrastate movements, with a few exceptions. I feel that a railroad being a very definite taxpayer in the community in which I am working, are entitled to interstate shipments, and for that reason I have made it a practice to ship all of my interstate shipments via the railroad. I have recently had a shipment come to me from San Antonio by Bull Steamship from Corpus Christi into Port Tampa; and I can't recall—it came on the second or third of this month, and it was a shipment of tanks that I was very badly in need of. I took the expense and the trouble to call the Bull Steamship several days to find out when that shipment got into Port Tampa; and when it got there I asked them to ship it via Seaboard, which they did; and it was 24 or 36 hours late, I don't recall which, now, in getting into Winter Haven. They told me if this truck service had been available I wouldn't have been put to the inconvenience that I was.

Q. What is your business? I didn't ask you.

A. Manufactured gas business.

Mr. Watkins: Did that shipment come into Tampa or to what is known as Port Tampa?

A. Port Tampa, I think; wherever the Bull Steamship Company's terminal is. I believe it was Port Tampa.

An Attendant: Port of Tampa.

[fol. 1639] A. Port of Tampa; that was it.

By Mr. Oven:

Q. And you would like to see this application granted?

A. Yes, I certainly would.

Q. And you would?

Mr. Balfour: Yes. There is one thing I might mention. In Winter Haven our shipments from Tampa have to go to West Lake Wales and then transfer into Winter Haven. They don't come directly into Winter Haven.

Q. The truck would come direct?

Mr. Balfour: Yes, sir.

Mr. Watkins: Wait a minute; I want to get something straight here. Look at your schedule and see if this truck goes direct to Winter Haven.

Mr. Oven: Look at it.

Mr. Watkins: I am looking at it.

(Discussion off the record.)

Mr. Oven: The schedule says, leave Tampa 6 o'clock, Mulberry 7:20, Bartow 7:50, Lake Wales 9, Winter Haven 10 p. m.

Mr. Watkins: All right, it goes through Lake Wales to get to Winter Haven?

Mr. Oven: But it gets there 10 p. m.

Cross-examination.

By Mr. Allison:

Q. Mr. Owens, what are your initials?

A. J. W.

[fol. 1640] Q. How long have you been in business in Winter Haven?

A. Ten years.

Q. And do you find the truck service that you use, satisfactory?

A. Very satisfactory.

Q. If the applicant here could furnish this service which you are interested in, without the use of trucks, would that still satisfy you as long as you got the expedited service—would it not?

A. Yes.

Mr. Allison: That is all.

By Mr. Watkins:

Q. How about the Coast Line service to Winter Haven?

Mr. Balfour: That is satisfactory.

Q. Is that shorter than the Seaboard?

Mr. Balfour: No, I don't think so; it is about the same distance, isn't it?

Mr. Owens: My business is split about equally between the two.

Mr. Balfour: I think it is about the same distance from Jacksonville.

Q. Well what is the schedule of the Coast Line there?

Mr. Balfour: The Coast Line comes from Orlando; the Seaboard comes around through the middle of the state—Ocala. The schedule is about the same.

Q. I mean out of Tampa.

[fol. 1641] Mr. Balfour: But I don't use the Coast Line out of Tampa at all.

Q. And you are not familiar with the service of the Coast Line from Tampa over there, are you?

Mr. Balfour: Never have used it.

Mr. Owens: I use the Seaboard because I am on the Seaboard. In other words, my plant is operated on the Seaboard, and I get several carload shipments a month; and it just pleases me to give the Seaboard a portion of my l. c. l. shipments.

Q. So you are not familiar with the Coast Line service?

A. (Witness Owens): I am familiar with the Coast Line service, but they do not solicit as actively as the Seaboard.

Q. What is their service, do you know?

A. Their service is overnight from Tampa.

Q. The same as the Seaboard?

A. I believe the Seaboard is maybe a few hours longer; but it pleases me to use the Seaboard. From Jacksonville I use Coast Line; from Tampa I use Seaboard mostly.

Chairman Matthews: If you are through, gentlemen, you may stand aside, gentlemen.

(Witnesses Balfour and Owens excused.)

[fol. 1642] Mr. O. N. Canova was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, please.
A. O. N. Canova.
Q. Where do you reside, Mr. Canova?
A. Winter Haven, Fla.
Q. What is your business?
A. Railroad agent.
Q. What railroad?
A. Seaboard.
Q. How long have you been engaged as such?
A. I have only been in Winter Haven two months.
Q. Have you compiled a statement for the months of October, November and December, from the records of the Seaboard office there, to show interstate freight received at Winter Haven in package car all rail movement in Tampa-Sebring package car?
A. Yes, sir.
Q. Is that the original of it?
A. Yes, sir.
Q. Examine this and see if it is a correct copy of it.
A. Yes, sir; as far as I can see it is, without checking it in detail.

Mr. Oven: We offer that as Exhibit #4.

[fol. 1643] Q. If this proposed application is grabted, to what extent will it speed up the service on interstate shipments from Tampa into your town of Winter Haven?
A. Approximately 24 hours.
Q. Three or 4 hours?
A. No; 24 hours.
Q. How is that brought about, Mr. Canova?
A. Well, a package car that comes into Tampa like this morning, is worked, or merchandise is put in another car, and it doesn't get out of Tampa until in the morning. That car goes into West Lake Wales some time around noon, and I don't get it until that evening around 5 or 6 o'clock; not available for delivery until the next morning. Whereas if the package car is worked in Tampa, like this

morning it would leave out on our trucks and be available in the morning.

Q. Reach Winter Haven during the night?

A. Yes.

Q. You have pickup and delivery there?

A. Yes, sir.

Mr. Oven: Take the witness.

Cross-examination.

By Mr. Watkins:

Q. Do you run a freight car out of Tampa at night, into Winter Haven?

A. Yes, sir.

Q. What time does it leave here at night?

[fol. 1644] A. Leaves Tampa?

Q. Yes.

A. I think it is early in the morning. I say, at night, but I mean—I don't know just what that schedule is.

Q. What is your schedule out of here to Winter Haven by rail?

A. I couldn't quote that exactly, but I think it leaves Tampa around 5 or 6 o'clock in the morning, possibly into Lake Wales around 12 o'clock, and then the switch engine picks it up that afternoon and brings it over to me and I get it around 5 or 6.

Q. Then to get a rail—how far is it from here to Winter Haven?

A. I think, about 55 miles. Well, it would be a little farther than that by rail.

Q. About 55 miles, and it takes 12 hours to move a rail car between those two points?

A. Yes.

Q. Is this all the shipments that moved in interstate?

A. Yes, sir; I got those from the records.

Q. The month of November you only had ten shipments arrive there?

A. Well, it is possible that there is more, for the simple reason I have two men working in my office, and one of them is not in the habit of showing transfer point, and the other one is; so I have had to correct that just for my own [fol. 1645] records; and I was told that by the clerks; not

being in Winter Haven but just a few months, we just hadn't——

Q. You get some freight in through another package car besides through Tampa?

A. Oh yes.

Q. Does more or less of your business move through Tampa, than moves by the other route?

A. Well, I guess there is more moves the other route.

Q. That is through Jacksonville?

A. Yes.

Q. And your Jacksonville car comes direct to Winter Haven without going through Tampa?

A. Yes.

Mr. Watkins: That is all.

By Mr. Allison:

Q. Mr. Canova, how long does this Tampa package car stay in Lake Wales before the switch engine picks it up and brings it to Winter Haven?

A. I would say—well from about 12 o'clock until possibly 4:30 or 5, something, in the morning.

Q. Just sitting over there on the siding?

A. Yes.

Q. If that particular car wasn't subject to delays of that sort, that would practically give you the service you want, wouldn't it?

A. No, it wouldn't satisfy my customers at all.

[fol. 1646] Q. It is what they have been getting for a long time, isn't it?

A. No; you see that car comes in late in the afternoon, and they don't get their freight until in the morning; and they don't want that freight late in the afternoon.

Mr. Allison: That is all; thank you.

(Witness excused.)

Mr. O. D. Lenn was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, please.

A. O. D. Lenn.

Q. Where do you reside, Mr. Lenn?
A. Bartow, Fla.
Q. What is your business there?
A. I am agent for the Seaboard Air Line at that point.
Q. How long have you been agent there?
A. Be 14 years this fall.
Q. Have you prepared a statement of interstate less than carload shipments received by your station between October 1st and December 31st inclusive?
A. I did.
Q. Is that it?
A. Yes, sir.
Q. Examine this please and state if it is a true and correct copy thereof?
[fol. 1647] A. Apparently; yes, sir.
Q. Could the movement of these shipments have been expedited had the truckline of the Seaboard, which has been operated and is now being operated as between Tampa and Sebring, been permitted to handle it?
A. It would; yes, sir.
Q. To what extent and in what respect?
A. Well, approximately half a day. That is based upon this: the present movement of interstate of course as testified heretofore, comes into Tampa, were to be moved on our truck, it would be out there ready for delivery the first thing in the morning; whereas the present setup, it gets in there anywhere from 10:30 to noon, usually around 10:30.
Q. Have you pickup and delivery service at Bartow?
A. We do have; yes, sir.
Q. That is operated on a different truck?
A. Contract operator.
Q. In case the consignee gets his own goods, does he get any allowance for that transportation?
A. He has an allowance of 5¢ per 100 pounds.
Q. Have you made any survey among the merchants in Bartow to find whether or not this service would be a convenience to them, necessary to them?
A. They naturally would prefer to have it in there at 8 o'clock in the morning to 10:30 or 11 o'clock. Coming [fol. 1648] in as it is we have to make—either we have to make two deliveries, or they have to make a second trip, naturally; because they are at the depot the first thing in

the morning, and we make deliveries the first thing in the morning.

Q. From what various points do those interstate shipments come into Bartow, that are shown on this list, Exhibit 5?

A. Why practically all over the northeastern and dentral territory. It covers a multitude of sins, there. In other words, what I give you there is the tonnage as taken from the record, and not with any effort to designate the points.

Examiner Yardley: It all moved through Tampa?

A. Yes, sir; it has to; it is the only way our package car stuff can get into Bartow.

Q. This other package car that is based on Jacksonville, you don't get stuff that way?

A. No, sir; that comes down through north Florida.

Q. This tonnage would not exceed the full capacity of the truck each day, would it?

A. I don't believe I understand. You mean that we would——

Q. I mean the tonnage handled, the interstate tonnage, if allowed to be put on this truck, coupled with the interstate tonnage that it has, would not overload the truck? Just about load it up, would it not?

A. No, from what I have saw of that truck, I don't believe that it would.

[fol. 1649] Mr. Watkins: Judge, you have opened up a branch field here; would you mind putting in the record the tonnage that is moving intrastate by truck?

Mr. Oven: I am going to do that.

Mr. Watkins: I have been very much interested in it, particularly the statement that you made here which shows on November 11th there was 10,992 pounds in the package car moving to Sebring.

Mr. Oven: That is right; we might possibly have to run a second section on some days, but ordinarily it would handle it.—I think that is all.

Cross-examination.

By Mr. Allison:

Q. Mr. Canova, in surveying the public as you stated you did——

Examiner Yardley: He didn't answer that question that he did. I noticed that particularly. He said that naturally they would want it. I noticed the question and answer.

Q. You have had occasion in your years of experience with the railroad, to contact the public with reference to their desires on expedited services, haven't you?

A. You mean, the matter of deliveries?

Q. Speeding up the service.

A. Certainly.

Q. Have you ever found the public when they weren't desirous of having the speediest service possible?

[fol. 1650] A. Yes.

Q. They always want it?

A. Practically all men who are keeping their stocks low, naturally want a speedier service.

Q. And usually they want that without giving a great deal of thought to what burden might incidentally be imposed on the carrier or all the carriers in the field?

A. I differ with you there. I wish it were possible—I don't know whether this is in order or not; I wish it were possible to have brought some of my Bartow people over here today; but those people have business of their own to take care of.

Mr. Oven: Got an orange festival over in that section?

A. Absolutely.

Mr. Oven: Can't get them away, can you?

Mr. Watkins: You could have subpoenaed them, couldn't you, Judge?

Mr. Oven: Yes. I have had unwilling witnesses subpoenaed before.

(Discussion off the record.)

Examiner Yardley: Anything further, gentlemen?

Chairman Matthews: Do you have anything further with the witness?—You may stand aside, Mr. Lenn. Call your next witness, Judge.

(Witness excused.)

[fol. 1651] Mr. J. P. Carter was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, please.
A. J. P. Carter.
Q. What is your business or occupation, Mr. Carter?
A. Trainmaster, Seaboard Air Line.
Q. What division?
A. South Florida division.
Q. Will you kindly explain to us the train schedules, freight train schedules, from out of the state into Tampa, and also the train schedules from Tampa through the Ridge section, covering the points involved in this application?
A. Well I will just explain those on the south Florida division; the north Florida trainmaster is there to tell you about those. But the Jacksonville freight comes into Tampa on the average of 6:30 in the morning; the package car. That goes out of Tampa for Bartow and Lake Wales, Mulberry, leaves here around—the yard, around 7:15 to 7:30 tomorrow morning.
Q. One second now. You said Bartow, Lake Wales, Mulberry; how about Avon Park?
A. Well that is the same connection.
Q. How about Sebring?
A. The same section.
Q. All right; go ahead.
A. Get to Bartow, it will average around 10:30 to 11 [fol. 1652] o'clock; get to Lake Wales; this train runs between the yard, Yeoman Yard, and West Lake Wales. Then there is a switch engine handles it from West Lake Wales to Lake Wales; the engine that handles the fruit, works the mines, and so forth; he gets to Lake Wales on the average of around 5 o'clock in the afternoon.
Q. Now—go ahead: there was some discussion here a minute ago about a 4-hour lay-over at Lake Wales. Can you explain that?
A. Yes, sir. This engine that goes to work, he mainly handles the fruit, and the fruit is loaded very late, sometimes as late as 2 or 3 o'clock in the morning. You know a crew makes overtime after 8 hours, and naturally we want to hold him as near to the 8 hours as possible—to

the least overtime possible. So we put him to work at 4 o'clock in the afternoon, to take care of the fruit business and handle this merchandise and other dead loads to Lake Wales. And something else; right between the time this train from Tampa gets to West Lake Wales, there is a congestion of passenger trains in there, and freight trains on the north Florida division; it would not be possible to make up his train anyhow.

Q. So that that is necessitated by reason of car conditions?

A. Yes, sir.

Q. Now are you familiar with this truck service?

A. Yes, sir.

Q. —between Tampa and Sebring?

[fol. 1653] A. Yes, sir.

Q. —and intermediate points?

A. Yes, sir.

Q. When does the truck leave Tampa?

A. Six o'clock in the afternoon.

Q. When does it reach Mulberry, Bartow, Lake Wales, Winter Haven, Avon Park and Sebring?

A. I think it's—I will tell you in a second; well it has got the same schedule there. It is due at Mulberry at 7:20, Bartow 7:50, Lake Wales 9, Winter Haven 10, Auburndale 10:30; Winter Haven 10:55, Lake Wales 11:35, Avon Park 12:50, Sebring 1:10 a. m. Then he turns around and comes back to Tampa; due back in Tampa at 5:10 a. m.

Q. Is the greater part of this tonnage outbound from Tampa, or inbound?

A. Outbound; practically all of it.

Q. Now with reference to the question of package cars being loaded, to use the technical term, on Jacksonville, or, on Tampa: will you explain that for the benefit of the record?

A. Well as I understand it, most of the western merchandise breaks bulk in Tampa, and of course naturally they have to unload it and reload it in the cars for these various points.

Q. How about the car loaded on Jacksonville?

A. Well that breaks bulk and then the stuff—the merchandise coming down from Wildwood—of course now this [fol. 1254] is out of my territory, understand; but that is loaded in another car from Wildwood, I think it breaks

bulk at Wildwood; it may possibly—Coleman, that is the next point; and works south. I couldn't say about that.

Q. If the Tampa car was held, to take out the stuff that was going to these intermediate points here, that would delay delivery to Tampa, would it not?

A. Absolutely; and it would be possible, because this train leaves before the train from Jacksonville gets in. Not necessary to leave, but you would have to break up the train and build the other train. The train from Jacksonville comes into the Tampa yard, and the train from West Lake Wales leaves from Yeoman yard, five miles apart.

Q. Are you prepared to tell us what if any car savings there would be to the Receivers of the Seaboard Air Line if the Interstate Commerce Commission would permit the handling of these l.c.l. shipments into this section of Bartow, Lake Wales, Winter Haven, Avon Park and Sebring, by the truck now being operated by the Seaboard?

A. Well on the south Florida division, 26 cars a month.

Q. 26 what?

A. 26 cars a month.

Q. 26 cars a month?

A. Yes, sir; that would be $26 a month. Now there is also entering into that, if you want to bring it in, the [fol. 1655] question of overtime on the crew there.

Q. What would that amount to?

Chairman Matthews: Mr. Carter, you testified now only as to the rental to be paid?

A. Yes, sir.

Chairman Matthews: Do you have only that in mind, Judge Oven?

A. Of course a Seaboard car, they count that the same as a foreign car.

Chairman Matthews: But Judge Oven's question I think was, what saving would you make.

Q. What car saving.

Chairman Matthews: You referred to the rentals?

Mr. Oven: Yes, sir. The situation is this. If we used one of our cars there, we have to use one of somebody else's cars.

Chairman Matthews: But I thought you were undertaking to show the difference in the operating, too, besides the rental.

A. Right at present—this wouldn't make any—very much difference on overtime; of course it comes in on account of market conditions of the fruit. But here we will start now pretty soon, instead of running this train, which we done prior to Christmas, done prior to the first of the year, instead of running it from Tampa to West Lake Wales, we run it from Tampa to Lake Wales to take care of all [fol. 1656] of the sand mines and the dead freight business there; you understand; and this switch engine I just told you about, would just handle the fruit, that is all he does, and which we will start again pretty shortly. And when this happens, and what did happen, you can figure, I think I am conservative in saying that the time taken up unloading the freight at Mulberry, Bartow and Lake Wales will take at least an hour and 15 minutes a day, which is all overtime; and that will amount to—an hour and 15 minutes a day will amount to $219.70 on a 30-day month.

Q. Amount to $219 a month?

A. And 7 months on a 30-day month.

Q. Then the saving on car rentals would be how much?

A. $26 a month; that would be a total of $245.70 a month.

Q. Have you compiled that from your records?

A. Yes, sir.

Q. Would there be any car saving on the north Florida division?

A. Well I would rather you would ask Mr. McMullen that.

Q. Where do the divisions separate, Mr. Carter?

A. We cross at West Lake Wales.

Q. Cross at West Lake Wales?

A. Yes, sir.

Q. Now there is some testimony—there are questions propounded here a short while back, indicating that the service into this section, which I will term the Ridge section, [fol. 1657] could be speeded up by a change of schedule of the train between Tampa and Sebring; could that be done?

A. I will explain that as to south Florida points. We work two crews between Tampa and West Lake Wales and Lake Wales, whichever it might be; and of course they do all local work, through freight work, all work there is, work the phosphate mines. All right; of course we got to figure on going north also. Coming north he has to work those phosphate mines, you know, and we give them until—as much as 3 o'clock to get the phosphate loaded; that will

throw him into Tampa anywhere from 6, 7, 8 or 9 o'clock, just according to the work. The rest has got to be up so he can be up at 6 o'clock the next morning. And if we used—if we run him out of here at night, it would take three crews, which would take that much more money.

Q. What would the additional crew cost?

A. It will cost you—(figuring) approximately $938 a month.

Q. Then would that be practicable?

A. That is not counting the coal, $3 a ton.

Q. Would that be a practical operation, considering the amount of interstate l.c.l. tonnage involved?

A. No, sir; it wouldn't.

Q. How long have you been connected with the Seaboard?

A. 29 years.

[fol. 1658] Q. You are familiar then with the operations and cost?

A. Yes, sir; I think so.

Q. Could this truck now being operated between Tampa and Sebring through the Ridge section, handle the l.c.l. interstate shipments now coming inbound for that territory?

A. I think so; yes, sir.

Mr. Watkins: Do you know how much it is handling now?

A. No, sir; I don't keep the tonnage; Mr. Hagood can give you that—the auditor.

Examiner Yardley: You started to make another statement.

A. I was going to say, in case it did exceed the capacity of that truck, they have got another one; they could run another one right behind it.

Q. You could run a second section?

A. Very easily. Because we have one coming from Brooksville right about that time; just gas up. It would be a pretty big truck, you know, but say you wanted to haul, all you have to do is put it on the other one.

Q. The operation of this truck service, in handling interstate business, would not result in entirely discontinuing the freight train service as between Tampa and these points, would it?

A. Not a bit; no, sir.

Q. But it would reduce the number of cars and reduce the expense?

A. The cost of operation, and the time on the consignees [fol. 1659] getting the freight.

Q. And it would improve the opportunity to the consignees to get their freight?

A. Get their freight first thing in the morning, instead of in the day.

Mr. Oven: You may take the witness.

Cross-examination.

By Mr. Allison:

Q. Mr. Carter, is this congestion of passenger trains at Lake Wales, about which you testified, seasonal or an all-year round proposition?

A. Well you might say, it is worst in the winter season, worst up until the first of April—up in April.

Q. As a matter of fact there is a considerably larger number of passenger trains operated in the area you are testifying about, during the winter months, than during the summer months?

A. Two more.

Q. Two more. Do they run more than the one section to each train?

A. Hardly ever; very seldom. But just a second; don't put this down. You understand that when you switch over there at West Lake Wales, you have to tie up the main line every time you make a switch.

Q. In other words, if this truck that you are applying for is permitted, how many employees are going to be used in the operation of that truck?

[fol. 1660] A. Two, the same as at present.

Q. Then are they going to be additional employees, or will they be——

A. Just as now.

Q. Will this operation result in laying off or furloughing of any of your personnel?

A. Train hands? No, sir.

Q. Then have you made an estimate of your approximate revenue, approximate net income you will receive from this operation?

A. No, sir; Mr. Hagood can give you that.

Q. Will you give me your estimate of the ratio between this particular movement of freight we have been talking

about—interstate freight through Tampa into these points, as compared with the through traffic that is moved on these same trains?—that is the phosphate and fruit?

A. No, sir; I couldn't do it; I have no figures. I have no way of finding out, unless I would go to the auditor to get that. He has already got that and is here to testify. No, sir; I couldn't give that to you.

Q. This auditor will be available today to give us this information?

A. He is sitting right there; yes, sir.

By Mr. Watkins:

Q. Do you handle fresh meats on that package car?

A. No, sir.

[fol. 1661] Q. Are fresh meats handled by the truck that you send out?

A. No, sir; I don't know of any; never saw it. I think I would be safe in saying no.

Q. No fresh meats moving by the Seaboard into that territory?

A. None that I know of.

By Mr. Bliss:

Q. Mr. Carter, you have one package car, called the Tampa-Sebring package car, that handles freight for Mulberry, Bartow?

A. No, sir; the car I am discussing is the car we call the Durant-Hesperides, that breaks bulk at Durant and works to Lake Wales.

Q. Durant-Hesperides package car?

A. Yes, sir.

Q. Well this is the car then that leaves Tampa at 7:15?

A. 7:15 and 7:30 in the morning; yes, sir.

Q. In what train?

A. It is—of course you understand we go north; it is called 467 train.

Q. And that arrives in Bartow at 10:30, did you say?

A. Well it would average that; yes, sir; sometimes a little later, but it will average around 10:30.

Q. And unloads at Bartow?

A. Yes, sir; unloads Bartow freight.

Q. When does it cross the north Florida division?

A. West Lake Wales.

[fol. 1662] Q. At what time?

A. Generally it will average going to West Lake around noon, 12 to 12:30. Of course there might be some days later, but that will be a pretty good average; 12 to 12:30.

Q. What happens there? Is it still Train 467 past Lake Wales?

A. No, he discontinues that at present.

Q. He discontinues completely?

A. Yes, sir; then it is handled to Lake Wales with switch engine.

Q. And arrives there about 5 p. m.?

A. Around that time; yes, sir.

Q. Well now does that same train, 467, carry another package car with goods for Sebring?

A. Yes, sir.

Q. When does that——

A. I would rather you would ask the other gentleman that. You see I have no jurisdiction over the north Florida divisions.

Q. You mean that car is what—cut off at West Lake Wales?

A. Yes, sir; and picked up with the switch engine going south towards Sebring; I don't know how far.

Q. But you don't know the distance?

A. No, sir.

Q. Is there a third car with freight for Winter Haven?

A. Yes, sir.

Q. That makes a total of three package cars?

[fol. 1663] A. Yes, sir; then he has—well that don't make any difference.

By Mr. Watkins:

Q. How does express move out on this line?

A. Between here and—we have—between where?

Q. Between Tampa and the Ridge section, as you call it.

A. Originates in Tampa and moves out of here on a passenger train we call 427; leaves here 11:40 at night.

Q. Leaves here at 11:40 at night?

A. Yes, sir.

Q. And gets into all these points before daylight?

A. Yes, sir.

Mr. Watkins: That is all.

Chairman Matthews: All right, you may stand aside, Mr. Carter.

Redirect examination.

By Mr. Oven:

Q. Mr. Carter, I understood you to answer Mr. Bliss that you had three package cars moving out on this train from Tampa; is that right?

A. Yes, sir.

Q. Each day?

A. Yes, sir; no, sir, six days a week; daily except Saturday.

Q. In short, it would be 18 a week?

A. Yes, sir.

Q. Now I think on your direct examination you said it would amount to a saving of 26 cars per month.

A. Well I was just telling you about the south Florida, [fol. 1664] Judge.

Q. Well in all then it would amount to three times that, would it not?

A. Yes, sir. I was just telling him, the south Florida.

Q. With reference to these cars, doesn't it take each car practically three days for the round trip before it is released?

A. Well, we load this merchandise in good phosphate cars and bring them back and put them at the mines the next day; we save haul that way. We try to load this merchandise in good phosphate cars, bring them back and put them in the mines.

Q. Then it wouldn't take three days for it to make a round trip?

A. No, sir; two days. You might say it would be out of service two days.

Q. Out of service two days.

A. Yes, sir.

Q. Then that would be equivalent to twice, at least, what you have testified to?

A. Yes, sir.

Q. So far as car hire is concerned?

A. Yes, sir.

Q. And that would amount to what?

A. Well, that would amount to $52 a month.

Q. At how much a day?
A. A dollar a day.

[fol. 1665] Recross examination.

By Mr. Bliss:

Q. What percentage of these cars do you say return loaded with phosphate?
A. Well, don't misunderstand me; those to Lake Wales as a rule would be very close to 100%, unless it happened to be a bad-order, or something.
Q. Then referring to the Lake Wales cars, if you didn't send those cars out with—as package cars, you would have to send out empties to pick up phosphate?
A. Well not necessarily. We do send plenty of them; yes, sir. We send hundreds of them out empty.
Q. In order to pick up phosphate?
A. Yes, sir.
Q. On this same train?
A. Not necessarily this same train. Sometimes this same train, sometimes an extra.
Q. Well this is the only regular train serving this area?
A. Yes, but we run extras through there every day; sometimes one or two, some days none, some days three or four.
Q. How far do you run the extras?
A. Anyway from Tampa to Boca Grande.
Q. Is Boca Grande on this same line?
A. No; it divides off out there; you couldn't give it unless you had a map.
Q. I have a map in front of me.
[fol. 1666] A. Well the Boca Grande line turns off out there at Edison; there is several junctions out there.
Q. Well you run some of them as far as Bartow, then, wouldn't you?
A. Sometimes; yes, sir; not to Bartow, but a couple of miles below Bartow, we run them; one down to Pembroke, another to Old Colony, another one to Husmico.
Q. When this train reaches Lake Wales around 12:30, about what—it turns around and goes back to Tampa?
A. No, sir; it ties up until the following morning.
Q. Ties up in West Lake Wales?
A. Yes, sir.
Q. Until the following morning?
A. Yes, sir.

Q. At what time?

A. Eight o'clock.

Q. And then at 8 o'clock——

A. It goes back to work, comes back to Tampa.

Q. All right, and when does it pass through Bartow, going in the opposite direction?

A. Going north? Well it will average around 1 to 2 o'clock.

Q. The next noon?

A. Yes, sir.

Q. And when does it return to Tampa again?

A. He will get into Tampa anywhere from 5 o'clock to 10 [fol. 1667] o'clock at night, according to the work.

Q. Well couldn't your train leave—couldn't this train leave Tampa at night, making its deliveries to the stations enroute to West Lake Wales, and then come back during the day time?

A. No, sir; he couldn't make a round trip for the 16 hours; he couldn't do that; and he couldn't leave here at night and get over there in time to get his rest and get back, to bring this phosphate in for the through freight north. Let me explain that to you; you don't know anything about this; the two main things, the train going south, we have a deadline of 1 o'clock at West Lake Wales for the Miami connection. All right; that is handling the merchandise and the Miami freight; we call it West Lake. coming north the main purpose of the train is to handle phosphate, and we give the mines as late as 3 o'clock in the afternoon to complete their loading. So you understand you couldn't leave here at night and get that freight over there in time for the early morning delivery, and go to West Lake Wales, and get his 8 hours' rest and start back and get the train in here in time to get that phosphate north that night, which is due out of here at 1 o'clock at night.

Q. Well your eastbound journey takes 5 hours—from 7:30 to 12:30?

A. Yes.

[fol. 1668] Q. Your westbound journey takes from 8 o'clock until——

A. Five to ten; not often 10, but sometimes.

Q. That might run 12 hours.

A. All right; I will explain that. Going south we do no work except unload *and* merchandise and set off. Coming

north we do all the work; we work all the phosphate mines. Coming north you work the first one we get is Husmica, that will take you an hour easily; sometimes we have to go to Bamberg:

Q. That is going off the line?

A. Off the line; yes, sir; which we will have to do this week, account of that Bamberg—account of the Old Colony cut-off, account of no rock; that is another hour and a half. Then the next mine we come to is Old Colony; if you work that in an hour you are lucky. Then you come on to Kings mine, and that will generally take you from 45 minutes to an hour, just according to what the situation is, how many cars are in there and how much business we got.

Q. Your 12 hour length of the trip however is taken in serving the mines on the west-bound trip?

A. Approximately.

Q. That is your hard luck.

A. Yes.

Q. So far as that crew is concerned?

A. Yes.

[fol. 1669] By Mr. Watkins:

Q. Did I understand that these cars going to the phosphate mines, handle this merchandise traffic out of Tampa?

A. No, sir. We use them; they wouldn't begin to handle them.

Q. Does the car that handles merchandise traffic out of Tampa to this area, does it come back to Tampa empty?

A. If it is a good car, as I explained before, we put it back in the phosphate mines, loading with phosphate; and we try to give them good cars.

Q. Then it is usually true that this car that takes the merchandise freight from Tampa, is used for loading phosphate?

A. As a rule, yes.

Q. As a rule?

A. Yes.

By Mr. Allison:

Q. Then Mr. Carter, how do you figure you are going to save a dollar a day?

A. Because the car is out of service—is in this service two days.

Q. I am trying to get this straight in my mind: if the car goes to Lake Wales one day, this package car——

A. Yes.

Q. It is in service?

A. Yes, sir.

Q. If it comes back the next day loaded with phosphate, it is in service.

A. Excuse me, sir; it don't come back loaded the next [fol. 1670] day; you bring it back empty the next day; that is two days; one day over and one day back to the mine.

Q. You switch it off at one of these mines and pick up a loaded car?

A. Yes, if the car is good, which it generally is; yes, sir.

By Mr. Bliss:

Q. How do you get your other cars to the mines?

A. We handle them—sometimes we get the cars, empty box cars at West Lake Wales, from the north Florida division; sometimes from Tampa, just according to how the car situation is, and how the superintendent of transportation handles them, which way his empties are located.

Q. It takes you a day then in any event to deliver an empty to a mine?

A. Yes, sir; absolutely.

Chairman Matthews: No other questions, you may stand aside, Mr. Carter.

(Witness excused).

Mr. E. R. McMullen, was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, please.

A. E. R. McMullen.

Q. Where do you reside, Mr. McMullen?

A. Tampa.

Q. What is your occupation or business?

[fol. 1671] A. Trainmaster, north Florida division, Seaboard Air Line Railway.

Q. What territory do you cover as trainmaster of the north Florida division?

A. I have Wildwood terminals; south to Tampa; the Orlando line.

Q. Are you familiar with the service applied for here, handling l.c.l. interstate freight into Bartow, Lake Wales, Winter Haven, Avon Park and Sebring?

A. I am familiar with it so far as the north Florida division is concerned, and in a general way familiar with all of it, yes.

Q. To what extent does the north Florida division have anything to do with it?

A. Stations of Auburndale, Winter Haven, Avon Park and Sebring are located on the north Florida division.

Q. What is the l.c.l. interstate freight service now into those points?

A. I presume you mean, from Tampa?

Q. Yes.

A. Tampa loads a car daily except Sunday, known as the Sumterville receiving car; that car moves out of here on Train #88, leave Yeoman at 8:30 p.m. to Wildwood.

Q. Doing what?

A. Leaving Yeoman at 8:30 p.m.

[fol. 1672] Q. When does it leave Tampa?

A. That Yeoman Yard is Tampa; is the yard. It leaves Tampa 8:30, goes to Wildwood, set out there and picked up by Train 89, handled to West Lake Wales, working en route at Sumterville, Centerhill, Polk City, occasionally at Auburndale and Winterhaven, but most of the time the car is handled into West Lake Wales and sent back on the switch.

Q. Then that car does not go by Bartow?

A. No, sir; that car doesn't go by Bartow.

Q. Then that is a different service from that. How are these points that I mentioned, served as to freight coming into Tampa?—and cars containing interstate freight loaded on Tampa: how do you get it to those points?

A. In that car that I just told you about.

Q. Then you don't go to Bartow with it?

A. No, sir.

Q. Nor Lake Wales?

A. No, sir.

Q. Nor Winter Haven?

A. Go to Winter Haven; yes, sir.

Q. Well when does that get to Winterhaven?

A. If it is worked on the south-bound trip, it would be worked there anywhere from 10 to 12 o'clock. If it goes on into West Lake Wales, which it frequently does, and handled back on the switch, it works at Winter Haven [fol. 1673] around 2 or 3 o'clock in the afternoon, and goes back and goes south to Sebring and reaches Sebring around 5 or 6 o'clock.

Q. If this truck carrying at present intrastate traffic from Tampa to these points, is permitted to handle interstate l.c.l. shipments to what extent will that expedite the Seaboard's service into these towns?

A. Well, they would have the freight available for delivery at 8 o'clock in the morning, when the stations open up; instead of from 10:30 a.m. to Winter Haven, if everything is favorable, to 5 or 6 p.m. at Sebring.

Q. Can you tell us about what saving in cars it would amount to?

A. Well it would save that car each day, 26 days a month; and that car would easily be out of service two days on each trip; and the cost—fuel cost of handling the car from Tampa to Wildwood, Wildwood to Sebring.

Q. Well now with reference to freight coming interstate l.c.l. that is loaded on Jacksonville, as distinguished from being loaded on Tampa: could that—that does not come down through Tampa?

A. No, sir; that does not come down through Tampa.

Q. Now as to the l.c.l. freight interstate that is loaded on Tampa, when that car reaches Jacksonville, could the freight be transferred there to this car that moves direct from Jacksonville into this section, without a detriment to [fol. 1674] the service other than these particular points?

A. No, it could not be; because they don't all of those cars come through Jacksonville.

Q. How do they get in?

A. Through Baldwin, cut off at Baldwin; come into Baldwin on Train 84, are picked up there by Train—a late train for Tampa, gets in here about, oh, anywhere from 8:30 to 10:30 in the morning.

Q. Then it would be utterly impracticable, would it not, to transfer the freight loaded on Tampa, into the car that is loaded on Jacksonville, for this territory?

A. It would. It would for two reasons; first, all the cars don't go into Jacksonville, and consequently it would

involve a 24-hour delay to the Tampa proper freight, to hold that car there to make the transfer.

Mr. Oven: You may take the witness for the time.

Cross-examination.

By Mr. Allison:

Mr. McMullen, do I understand that you have a package car whose ultimate destination is the Ridge section, which leaves Tampa at 8:30 p.m., goes to Wildwood, then goes back down to Lake Wales?

A. That is right.

Q. How far is it from Tampa to Wildwood?

[fol. 1675] A. 69—73 miles.

Q. How far is it from Wildwood to Lake Wales?

[fol. 1675] A. 67—73 miles.

Q. At the same time you have a train leaving Tampa at about 7:15 a.m. which goes to the Ridge section by way of Bartow?

A. I believe so.

Q. Why wouldn't it be to the interest of the Seaboard to avoid that long haul to Wildwood, and use this other service?

A. Obviously it would mean later arrival of freight to the consignees; because it has already been testified that that train leaves here in the morning, gets to West Lake Wales around 12:30 noon. And then we would have no service northbound at that time, to work the car out. While at Winter Haven, it would leave Auburndale, Polk City, those points, without adequate service.

Q. But I understand that the situation now is, that this car that goes to Wildwood is apt to arrive at Lake Wales any time between 10 o'clock in the morning and 3 o'clock in the afternoon; isn't that correct?

A. No, not at West Lake Wales.

Q. I beg your pardon; Winter Haven.

A. Winterhaven; that is correct.

Q. Because it is handled by either one train or another between Wildwood and Lake Wales, it is not always the same connection that picks that car up?

A. It always is handled by the same train, but occasionally, or frequently I will say, the train doesn't have time [fol. 1676] to stop at Winter Haven and unload the freight.

In that case that car is taken on into West Lake Wales and handled back on the switcher. It is always handled on the same train. Now I will make a correction there: it isn't always handled on the same train, sometimes 89 handles it, sometimes 87 handles it; but they run fairly close together.

Mr. Allison: That is all.

By Mr. Bliss:

Q. Mr. McMullen, when does Train 88 arrive in Wildwood?

A. 11:57 p.m.

Q. And when does Train 89 leave?

A. An average I will say of 6:30 to 7 o'clock in the morning.

Q. 6:30 a. m.?

A. Sometimes earlier, sometimes later.

Q. When does Train 87 leave?

A. Train 87 usually about from 9 to 10 o'clock in the morning.

Q. Are they the first trains through after midnight?

A. That is right; first southbound trains to NW&N, or to the line that we have reference to.

Q. If you are able to abolish the use of these cars, as you testify, how are you going to handle freight for Sumterville and Centerhill?

A. We have other cars in the trains on which we can load that stuff.

[fol. 1677] Q. For instance?

A. Well we can handle the Sumterville and Coleman stuff to Wildwood from Tampa in our present authorized truck service; and we have other merchandise cars in 89, other than the Sumterville-Sebring car, in which that freight can be loaded and handled by Train 89.

Q. You say that Train 89 gets to Winter Haven at 10 a.m.?

A. About 10, 10:30, sometimes 11 o'clock.

Q. When does it get to West Lake Wales?

A. Around noon.

Q. Does it continue on to Avon Park and Sebring?

A. No, the train stops there.

Q. That stops at West Lake Wales?

A. 87—then we have a local service out of West Lake Wales every other day to West Palm Beach; and we have a through freight then out of West Lake Wales for Miami every day.

Q. When does that through freight go there?

A. That is #87, that leaves Wildwood 10 o'clock.

Mr. Oven: I don't see why that is material.

Mr. Bliss: I am trying to develop simply what happens to those cars, now, and what sort of service is available.

A. He leaves West Lake Wales around 3 or 4 o'clock in the afternoon.

Q. How long have these schedules been in effect in general?

A. Train 87—Trains 88 and 87 are year-around trains; [fol. 1678] for the past—ever since the line to Miami was opened up.

Q. Have you ever had any better service with faster schedules and more trains?

A. No, sir.

Examiner Yardley: Have you ever had any worse?

A. No, sir.

Examiner Yardley: Same schedules, I mean?

A. Same schedules, all the time.

(Discussion off the record.)

Q. Can you name any out of the state points at which there are package cars to Tampa—loaded to Tampa?

A. Out of my line altogether.

Q. And on cars to Jacksonville?

A. Out of my line.

Q. You are not familiar with what points these package cars to Tampa and Jacksonville originate?

A. No, sir.

Q. Do you have a witness who knows?

Mr. Oven: You have got it all through here, showing where the stuff comes from.

Mr. Bliss: Do you have a witness who knows whether they have package cars to both Tampa and Jacksonville?

Mr. Oven: That is in the record; one loaded on Tampa and one on Jacksonville. That is in the record. One goes direct from Jacksonville, and the other goes to Tampa and [fol. 1679] has to be broken and come back this way.

Mr. Bliss: No; I am talking about from Chicago; isn't there a car from Chicago to Jacksonville?

Mr. Oven: I think there is, in that direction; but that goes to Tampa; that contains stuff for this section.

Mr. Bliss: Well, I can't develop it. That is all.

Redirect examination.

By Mr. Oven:

Q. Mr. McMullen, you have no jurisdiction over the movement out of Tampa itself, do you?

A. No, sir.

Q. In the south Florida division?

A. The south Florida division has jurisdiction over Tampa terminals.

Q. And you are in—you have not that division?

A. My division starts with the yard limit board.

Q. And extends north from there, is that it?

A. Extends north from there.

Q. And the south Florida trainmaster's jurisdiction goes west from there, is that right?

A. It goes east; he goes—to be specific, it is north Florida division from Tampa to Valrico, and from Valrico east it is south Florida division, north is north Florida division. And these trains that have been referred to here go out of Tampa, it is south Florida division terminal, and go over the north Florida division to Valrico, and back [fol. 1680] on the south Florida division to Mulberry, Bartow and Lake Wales.

Q. They simply travel over your division for a certain——

A. For a short distance, to Valrico.

Q. Do you know when the package car, l.c.l. shipments, gets into Tampa from the west and the north?

A. Specifically not. I know that we have on my train 81 that comes in here, I know we have Tampa package cars.

Q. When does 81 get here?

A. 81 gets in Tampa usually around 8:30 or 9 o'clock.

Q. Day or night?

A. Day; that is in the morning.

Q. Then they can't be moved by a train until the next day?

A. That is right; or it goes out of here to those points on #88 that night.

Q. If it is going to those points you won't reach, it goes the next day?

A. That is right, 467 the next day.

Q. And won't reach those points by that train until at noon and in the afternoon?

A. To the points testified by Mr. Carter.

Q. And if it leaves here on a truck, it can go out that afternoon or evening and be delivered before business hours the next day?

A. That is correct; it would be ready for delivery at 8 o'clock the next morning.

[fol. 1681] Q. That is with reference to one train coming into Tampa; now what time does the other train arrive in Tampa?

A. The other train arriving in Tampa is the south Florida division train; I believe Mr. Carter testified it arrived here about 6:30 in the morning.

Q. No, I am talking now about any other train bringing the interstate freight in from the north and west.

A. Well that is the south Florida division train; he comes around by—leaves the north Florida division at Waldo, and comes down through Gainesville, Brooksville and in that way; gets in here at around 6:30 in the morning; he has the connection from the north and the east, but he does not have the connection from the west.

Q. Your train you mentioned a while ago is the only one that has a connection from the west?

A. He has the connection from the west; that is correct.

Mr. Oven: That is all.

(Witness excused.)

Chairman Matthews: Judge, did you state this morning you were going to give us an exhibit showing the movement of intrastate traffic?

Mr. Oven: Yes, sir; I am coming to that right now.

MR. R. M. LEWIS was recalled and further testified as follows:

Direct examination.

[fol. 1682] By Mr. Oven:

Q. Mr. Lewis, have you caused to be prepared a statement of l. c. l. freight tonnage via SAL truck from Tampa, Fla. proper to the Ridge section involved here in this application?

A. You want the freight that is loaded on the truck? Is that it?

Q. I say, via SAL truck from Tampa, Fla. proper to the Ridge section.

A. Yes, sir; for a period——

Q. Have you caused to be prepared a statement of SAL l. c. l. Florida intrastate transfer tonnage handled from Tampa, Fla. to the Ridge section?

A. Yes, sir.

Q. Will you produce that?

Mr. Oven: We offer that in evidence as Exhibit #6.

A. I would like to call your attention to an error there on that statement. It is added up wrong: where it is added 30 thousand, if you will add that it will add 50 thousand; that should be 50 thousand there where that *3* is.

Q. Then the total in Exhibit 6, where it reads 30,067 will be amended to read 50,067.—Does this statement, now, show the total pounds, number of trips, and average pounds per trip, of freight moving intrastate respectively out of Tampa proper, and also through Tampa to these points?

A. That is correct.

[fol. 1683] Q. Have you caused to be prepared a statement of l. c. l. freight tonnage via SAL package cars from Tampa proper and Tampa transfer to Ridge section?

A. That is inter-freight—yes, sir.

Q. I say——

A. Yes, sir.

Q. That is interstate freight, is it not?

A. Yes, sir.

Mr. Oven: We offer that as Exhibit #7.

Mr. Watkins: Do I understand this second calculation on Exhibit 6 deals with truck traffic?

A. Yes, sir; SAL truck.

Q. It says at the top, but you don't say "Truck" at the second heading.

Chairman Matthews: Perhaps that ought to be amended to show that, if that is correct.

A. That really applies to the truck. In other words, this freight you see at the bottom is freight that originated in other parts of Florida, but didn't originate at Tampa proper.

Mr. Oven: That is just what they want. We ask leave to amend that by adding after the word "handled", "by SAL Truck" from Tampa, Fla., to Ridge Section.—We move to amend the second heading on Exhibit 6 by adding after the words "tonnage handled", the words "by SAL Truck".

(Discussion off the record.)

[fol. 1684] Q. Now Mr. Lewis, I believe you gave the aggregate of these figures this morning, did you not?

A. On this statement here, and I would like to correct that, because I think we created the wrong impression there. You asked me a question this morning—I don't know whether I can repeat it exactly or not: what the difference was between the intra freight tonnage and the interstate; and when you asked me that question I gave you this figure here, which was incorrect. That was on the last statement there.

Q. Do you wish to correct that now?

A. I would like to correct that; yes, sir.

Mr. Allison: Which figure is it?

A. The figure 137 thousand; I told you that was handled on the truck, and that this was the interstate freight here. This is also interstate freight, too.

Examiner Yardley: The reporter was taking that down; do you know what he was talking about, Mr. Reporter?

The Reporter: No, sir.

Mr. Watkins: That is columns 1 and 2 on Exhibit 7, both covering interstate freight.

Mr. Oven: One from Tampa proper, and the other through Tampa transfer.

Q. Now go ahead and make your explanation.

A. The reason for that division there is, when we put on this truck, the Interstate Commerce Commission ad-
[fol. 1685] vised the Receivers of the Seaboard Air Line Railway that we could not handle any shipment on that truck that had the identify of an interstate shipment, regardless of whether it was from the bill of lading or from the marks on the package. At that particular time there was a lot of tonnage moving into Tampa by boat, rail and truck, going into various warehouses, and reshipped. So we did not handle that tonnage on the truck, because we put it under the category of interstate shipment. However, since then we have got a ruling from the Interstate Commerce Commission, and they designated water-front warehouses. I think that was explained in this way; that after a shipment had left the car, or the warehouse, that it went to an interior warehouse, that it lost its identity as an interstate shipment; so that is the reason that statement was made up like it was. I just wanted to explain that.

Mr. Watkins: You got a ruling from the Interstate Commerce Commission? I wonder if you would be kind enough to refer us to that ruling, or if you have a copy of it, put it in the record?

A. Well now that was furnished by Mr. Powell's office in Norfolk, from the superintendent. I haven't got it with me.

Mr. Watkins: I wonder if you would be so kind as to supply that reference?

Mr. Oven: We will give you the data pertaining to it.

(Discussion off the record.)

[fol. 1686] Examiner Yardley: You will try to obtain a copy of that ruling?

Mr. Oven: I will ask him to mail it to me.

A. The information I have was from the Receivers of the Seaboard Air Line, addressed to the superintendents of the various divisions.

Q. Do you know the number of it, or anything?

A. No, sir; I do not.

Examiner Yardley: You must have some instructions on it, then, haven't you?

A. Yes, sir; my instructions from our Norfolk office through my superintendent.

Examiner Yardley: It will be 15 days, I imagine, before you can furnish that?

Mr. Oven: Yes, sir. Now let me have just what that is, please.

(Discussion off the record.)

A. They just came out and said we couldn't handle any shipment that had the identify of an interstate shipment, if it was on the bill of lading or on the package; but it was afterward determined that if the shipment was transferred from a box car to a warehouse in Tampa, in the interior, left the waterfront entirely, that it lost its identity of an interstate shipment. In other words, I will draw you an example of that: you take the Campbell Pork & Beans people, ship beans in here by the thousand cases, [fol. 1687] I will say; they put it in a storage warehouse, it stays here six months, and then he ships 50 cases of these beans to Bartow. When it first came out the Seaboard had the impression that we could not handle the shipment on the truck. Now that has been changed, and we can handle it. That is the reason of that tonnage there—the statement is made up like it is.

(Discussion off the record.)

Mr. Oven: All right, take the witness, gentlemen.

Cross-examination.

By Mr. Allison:

Q. Mr. Lewis, what is the position of the Seaboard with reference to the Lee Terminal: Is that considered a waterfront warehouse?

A. Yes, sir.

Q. And you do not handle any freight by your truck which is dropped at the Lee Terminal?

A. We have shipments every day out of Lee Terminal, and we can't put them on the truck; that is correct. The point I was trying to bring out on this interstate business here.

Q. Was there a particular warehouse involved in this corrected ruling, when the question of interior and water-front warehouses was disposed of?

A. I don't think so. I think it applied to all warehouses in Tampa.

Q. Do you recall whether that water-front warehouse [fol. 1688] was construed to be one with a dock, on a navigable stream?

A. No, sir; I do not.

Mr. Allison: That is all.

(Witness excused.)

(Brief informal recess was had, at 3:36 p. m.)

Mr. H. A. Hagood was sworn and testified as follows:

Direct examination.

By Mr. Oven:

Q. State your name, please.

A. H. A. Hagood.

Q. Where do you reside, Mr. Hagood?

A. In Tampa, Fla.

Q. What is your business or occupation?

A. I am division auditor of the south Florida division, Seaboard Railway.

Q. As such auditor, do you have an account of the operating expenses, total out-of-pocket expenses, grand total expenses, statistics and so on, of the cost of operations of the Tampa-Sebring truck service since it was inaugurated by authority of the Railroad Commission of Florida?

A. Yes, sir.

Q. Was that prepared by you or under your supervision and direction?

A. Yes, sir.

Q. Is this the original of it?

[fol. 1689] A. That's an exact copy; the original is here, sir.

Q. This is the original?

A. Yes, sir.

Mr. Oven: This is #8.

Q. Now revert to that statement, Mr. Hagood. The expenses, including gasoline, oil, lubrication, cleaning, wages driver and helper, mileage tax, state license, and repairs, for the period of time, amounted to $2242.07? Is that right?

A. Yes, sir.

Q. And to that was added insurance, depreciation, and interest on investment, which made the total out of pocket expenses of the operation for the time, 2445.77?

A. Yes, sir.

Q. And in that you operated 27,904 miles?

A. Yes, sir.

Q. And the number of trips were 128?

A. Yes, sir.

Q. The number of quarts of oil used was 139?

A. Yes, sir.

Q. And the cost per trip 19.11?

A. Yes, sir.

Q. Was that a round trip?

A. That is a round trip.

Q. You have at the left hand corner of this statement, a star, 5/12 of the annual charges; that means you took the [fol. 1690] annual, and took 5/12ths of that, to arrive at what you put in the——

A. In the total column.

Q. The total cost?

A. Yes, sir.

Q. Now the first trip of this truck was July 11, 1938; is that right?

A. That is right.

Q. And the other figures are the model, the serial number, the motor, and the weight?

A. That is correct.

Chairman Matthews: What rate do you figure your interest at, Mr. Hagood?

A. At 6% on the amount set up in the Equipment account.

Chairman Matthews: And your depreciation, do you remember the rate?

A. The depreciation I understand is—for this class of equipment, about 7%.

Q. Now Mr. Hagood, would the application on this truck of interstate freight, increase the cost of operation any?

A. It might perhaps increase the cost of operation slightly, due to increased tonnage, requiring perhaps some additional gasoline consumption per truck mile.

Q. It would not though increase the cost of the driver or the helper?

[fol. 1691] A. No, sir.

Q. Nor the mileage tax?

Examiner Yardley: Now is that absolutely correct? It would take longer to load and unload the merchandise on this truck, wouldn't it?—and might require some overtime, or something of that kind?

A. Under the present setup no, sir; because we pay our driver and helper a monthly salary, which covers all services performed; and on the present schedule we do not pay any overtime.

Examiner Yardley: How many hours does it take to make this round trip?

A. I don't know, sir.

(Discussion off the record.)

Mr. Lewis: 6 p. m. to 5 a. m.; about 11 hours.

Q. Well, outside of a possible increase in gasoline consumption and oil consumption because of a heavier load, the cost would be about the same?

A. About the same.

Mr. Oven: That is all.

Cross-examination.

By Mr. Allison:

Q. Mr. Hagood, I don't notice any figures on here for the month of July, although there is a notation in Exhibit 8 that the first trip was on July 11, 1938.

A. I omitted the few trips that were made during the last [fol. 1692] half of July, in order to avoid pro-rating any of these charges; and the fact it was only a few trips involved. I took the five months complete beginning the first day of August.

Mr. Allison: That is all.

By Mr. Sidney Allen:

Q. Is it permissible for me to ask one or two questions on this statement, sir?—Mr. Hagood, where does the wear and tear on tires show on this statement?

A. In Item 8, repairs.

Q. That was 11.93 for 5586 miles; does that include truck repairs and tire repairs?

A. Yes, sir; all repairs to the truck, including the tires.

Q. Have you any provision for supervision which you charge to your truck operation?

A. There is no supervision nor accounting included in this statement.

Q. Do you have any terminal employees charged to this?

A. None at all.

Q. Do you have any tariffs and schedules chargeable to your truck operation?

A. Not that I know of.

Q. Do you have any solicitation chargeable to your transportation?

A. Not—no, sir; not included in this statement.

Q. Now in referring to the bottom of your statement, it says Depreciation 205.91. You say that was based on 7%?

[fol. 1693] A. Well that is our annual depreciation on this particular group-class of equipment.

Q. And you consider that that particular type or group of equipment is going to last approximately 14 years?

A. That is the period of depreciation on the class of equipment—that is this general group of equipment; yes.

Q. Where do you buy such equipment, Mr. Hagood, that will last 14 years?

A. Well it is my understanding that that depreciation of equipment is prescribed by the Interstate Commerce Commission under group plan, ICC classification of accounts.

Mr. Watkins: You are talking about a rail freight car now, aren't you?

A. No.

Mr. Bliss: What group——

Mr. Allen: Just a minute, please.

Q. Do you have charged anywhere on this statement, your supplies and expenses such as freight bills, bills of lading?

A. No, sir; I have not.

Q. Do you have any incidental charges insofar as local delivery at the other end of your truck transportation?

A. We have no local deliveries except to our station—warehouse.

Q. When this freight leaves from Tampa and goes to Lake Wales, this truck does not deliver that freight, does it?

[fol. 1694] A: No, sir, except at the station warehouse; and in most cases—in fact in every case—I was going to add that in most cases the delivery is made after the station force is off duty.

Q. Do you have anything chargeable in this statement to loss and damage that accrues on the transporting of freight on this equipment, that is referred to in this statement?

A. No, sir.

Q. That is all chargeable against rail transportation?

A. I presume so. I don't handle loss and damage claims.

Q. Who is the superintendent of your truck operations in the state of Florida?

A. The operation of this truck is under the supervision of the division superintendent.

Q. And that is all chargeable to rail?

A. Yes, sir.

Q. You have no charges then for tariffs and schedules?

A. No, sir.

Q. You have no Railroad Commission expense chargeable to this—applications for certificates, and so on?

A. Only—no, there are no such charges. Item 7 covering state licenses, of course includes the State license tag and the Railroad Commission number tag, and driver's license, only.

Q. Now on your insurance you have $96 involved here; does that cover cargo insurance, or is that carried under the rail?

[fol. 1695] A. We have been using for the purpose of our local studies, this amount of $8 per month, which I understand covers all types of insurance.

Q. That covers cargo insurance, $8 per month?

A. Well, I don't know.

Q. You don't know whether the cargo is included in that?

A. I do not.

Q. You don't know whether public liability and property damage is included in that?

A. I do not.

Q. You don't know whether workmen's compensation is included in that?

A. I do not.

Q. In other words, this $96.00 is just an arbitrary amount?

A. It is to the extent that it was given me for use in our periodical studies of highway truck operations, by our superintendent of insurance at Norfolk, Va.

Q. Who is your superintendent?

A. Mr. L. J. Malloy.

Q. Just one other related insurance: you don't know whether fire and theft insurance is involved in that or not?

A. No, sir; I do not.

Q. Do you have any solicitation chargeable to this?

A. No, sir.

Q. Are there any of the salaries of the general officers [fol. 1696] included in this?

A. No, sir; nothing but the driver and helper.

Q. Any of the expenses of the general offices?

A. No, sir.

Q. No office employees?

A. No, sir.

Q. Any law expense?

A. No, sir.

Q. Any general office supplies and expenses?

A. No, sir.

Q. Any communications service?

A. No, sir.

Q. Any employees' welfare expense?

A. No, sir.

Q. Any uncollectable revenues?

A. No, sir.

Q. And in fact you have only got about a third of your expenses on this; is that correct?

A. Well, I have on here, with the exception of these three items down here—10, 11 and 12, the actual monthly out of pocket expenses incurred and audited on this division.

Q. Well Mr. Hagood, do you think that an inexperienced truck operator can operate trucks at approximately one

third of the amount that it costs an experienced operator to operate them?

A. Will you repeat your question, please?

(Question read.)

[fol. 1697] A. Well, I am sure I don't know.

By Mr. Bliss:

Q. One more question: do you have anything in here for terminal expenses or any sort?

Mr. Oven: He answered, No.

Mr. Bliss: Terminal employees, he answered No. I want to know if he has rent for terminals, maintenance for terminals.

A. Why we haven't any terminal expense in the sense I think that you mean. Possibly I don't understand what you mean by terminal expenses.

Q. Well have you included any share——

A. Rents for storage or warehouse facilities? No.

Q. Any of the cost of maintaining the stations?

A. No.

Q. Taxes on them, and so on?

A. No.

Q. You have put in practically no overhead in this statement?

A. I have put in only three items that you might consider overhead—items 10, 11 and 12.

Redirect examination.

By Mr. Oven:

Q. Mr. Hagood, as a matter of fact, this truck service is a station to station service, serving only the stations now served or previously served by the Seaboard Air Line Railroad on its rails, is it not?

A. Yes, sir.

Q. To operate it, it doesn't become necessary to obtain [fol. 1698] any other terminals, or have any other terminal employees, does it?

A. No, sir; our terminals were already established.

Q. And the business was supervised by the same officers that supervise the balance of the system, was it not?

A. Yes, sir; without any additional supervision necessary.

Q. Now so far as solicitation goes, were any solicitors employed by the Seaboard especially for this work, or do the solicitors of the Seaboard generally handle it as well as all other work?

A. As far as I know it is all handled by the same traffic solicitors.

Q. Now so far as freight bills and bills of lading are concerned, do you handle that on a Seaboard bill of lading?

A. It is my understanding that the agent does.

Q. Now as to insurance, interstate freight coming in here we will say from Chicago over the Seaboard Air Line from River Junction to Jacksonville, thence on down—or River Junction to Baldwin, thence on down, that would already be covered by insurance, would it not?

A. Yes, sir.

Q. Now so far as insurance against cargo, as to fire and theft, that also applies, does it not?

A. It is my understanding that it does.

Q. This insurance that you have charged in here, is simply insurance for property damage, personal liability, [fol. 1699] and against fire and theft on the car itself?

A. On the unit of equipment, yes.

Q. Does the operation of this truck in any way enhance, over and above the salary or wage paid the driver and the helper, and the items appearing from 1 to 12 in this statement—increase the Seaboard's operating expenses at all?

A. Will you repeat the question, please?

(Question read.)

Mr. Oven: Put that 'increase' instead of enhance.

A. It is my understanding that Seaboard's expenses have been increased by reason of this truck service only to the extent shown on this statement.

Mr. Oven: That is all.

Redirect examination.

By Mr. Allison:

Q. Mr. Hagood, have you got any legislative expense charged against this operation?

A. No, sir.

Q. What about items such as the expense of this hearing? Do you propose to charge it against this operation?

A. No, sir.

Q. Isn't it a fact that if you didn't have the rail setup with this equipment, that you could not operate this truck according to that statement?

A. Well you understand that all the operating expenses of the railroad do not pass through my office. I am only concerned with the Division expense; expense incurred on [fol. 1700] the operating division. So many charges perhaps such as expense of this hearing, would not pass through my office at all, and I would not be in position to say. However, I don't think it would be charged against this truck operation.

Q. We have been waiting all day for some one who could answer our questions, and you were referred to us by the previous witnesses: that is the reason for my questions. Do I understand that you propose to operate this truck, if this application is granted, in exactly the same manner that you are handling intrastate freight?

A. I do not know of any proposed changes.

Q. And you would only transport your own merchandise, so to speak, between your own depots?

A. As far as I know, that is the intent.

Q. What increase per day in tonnage would be added to this equipment if the interstate freight, which has been discussed here all day, were added to this truck?

A. I don't know.

Q. Who can testify to that?

Mr. Oven: That is shown by the statements here, 6 and 7.

A. Perhaps our local agent could testify to that. He has the tonnage records in his office, both on intrastate and interstate shipments.

Q. Are you familiar with the tonnage which any of the motor truck carriers are transporting in this territory?

[fol. 1701] A. No, sir.

Q. Isn't it true that the population in this Ridge territory fluctuates extremely between the winter and the summer months?

A. I believe it is generally understood that that is a fact.

Mr. Allison: That is all I have.

(Witness excused.)

Examiner Yardley: Judge Oven, are these routes shown in the application, are they the correct highways?

Mr. Oven: Yes, sir.

Examiner Yardley: Now I understand this is strictly a station to station proposition?

Mr. Oven: Yes, sir.

Examiner Yardley: Only freight originating on the Seaboard Air Line?

Mr. Oven: Yes, sir; or its connections.

Examiner Yardley: Or its connections, including water connections?

Mr. Oven: Any shipment made by rail or water via Seaboard Air Line after it touches the Seaboard Air Line.

Examiner Yardley: What if a shipment came—you have some water, coming into Tampa?

Mr. Bliss: If it comes from Baltimore, it was by Bull Steamship Line.

Mr. Oven: Came into Tampa consigned Seaboard Air Line, we would expect to handle that.

[fol. 1703] Examiner Yardley: By truck?

Mr. Oven: By truck.

Examiner Yardley: From the port to destination?

Mr. Oven: Yes, sir.

Mr. Bliss: Such as this shipment here on about the 7th line on page — on Exhibit #3, you would expect to handle that?

Mr. Oven: Seventh line?

Mr. Bliss: Yes; Pan-Atlantic Steamship Line.

Mr. Oven; Where does it come from? If it came into Tampa interstate care of Seaboard Air Line, I would say Yes, we would expect to handle it; 58¢ there; we would like to have it if we could make it.

Mr. Watkins: Is that all the witnesses you have got? I haven't found out what I wanted, yet; I have been waiting a day for it. Will you stipulate with me that we can refer to in the record, all of the applications of the Seaboard Air Line Railroad that are pending before the Commission?

Mr. Oven: No, I cannot; but I will file it with the record when I obtain it.

Mr. Watkins: What—your applications?

Mr. Oven: Our applications.

Mr. Watkins: Well, I have got them.

Mr. Oven: Well I am not going to agree with what you have until I know that is checked up with my client.

Mr. Watkins: Do you know Mr. Stanley's signature?

[fol. 1703] Mr. Oven: Oh yes.

Mr. Watkins: Well, look at it.

Mr. Oven: This is the State of Florida——

Mr. Watkins: Well, that is attached to the application.

Mr. Oven: Where is what you want me to identify?

Examiner Yardley: Just what is it you are trying to find out?

Mr. Watkins: I want him to stipulate that we can refer to all the applications pending before the Interstate Commerce Commission for any operating rights—in this record.

Mr. Oven: Well where are they outlined in this statement?

Mr. Watkins: There are some of them in this statement; there are 19 of them.

Mr. Oven: I understand that.

Mr. Watkins: Whatever they are, Judge, it doesn't make any difference what they are; if they are on file with the Commission, will you stipulate that we can refer to them?

Mr. Oven: Some I think have been granted; some are still pe ing.

Mr. Watkins: That is right.

Mr. Oven: I don't know what have been granted altogether; I don't know what number the Board to which it was referred has reported on, either favorably or unfavorably; and I don't know what if any are pending that haven't been heard. I know that the Joint Board has recommended one service as between Fernandina and Jackson-

[fol. 1704] ville. I know—I think that one or two operations as between Jacksonville and Tampa have been authorized.

Mr. Watkins: Regardless of what they are or where they have been authorized, or their present status, will you agree that in our Brief we can refer to all of them?

Mr. Oven: I will agree to obtain from my superior officers just what they are and file that with the Board and with the Examiner, and furnish each party a copy.

Mr. Watkins: That is fine. Now then——

Chairman Matthews: How much time, Judge, do you want for that?

Mr. Watkins: I think it is unnecessary, but if he wants to do it that way we may.

Examiner Yardley: Mr. Watkins, what if they don't agree: then what?

Mr. Watkins: Well I am doing this for the benefit of this motion that I have made. I am going to refer to it anyway.

Chairman Matthews: He wants to know what you would do if Judge Oven didn't agree to stipulate or furnish it.

Mr. Watkins: I will make a motion to the ICC that all hearings be consolidated, if he refuses, because—so that the Commission can at one time and on one record find out our whole circumstances here, and what the Seaboard Air Line is trying to do.

[fol. 1705] Mr. Oven: I will furnish the information. I think I can easily do it in 15 days.

Chairman Matthews: We will do that, then.

Mr. Watkins: May I ask the Judge another question? Have you any objection to this certificate, if granted, being limited to apply—to allow traffic to move over that truck line only when such traffic is received prior or will receive subsequent rail transportation?

Mr. Oven: Has received prior or will receive subsequent rail transportation? No. A shipment might be sent to Tampa care of Seaboard Air Line consigned to Sebring.

Mr. Watkins: And you would object to that?

Mr. Oven: I would want to handle that, yes, as far as I know; I am not a traffic man, and I am not authorized to answer those questions. I am giving you now my personal opinion on that.

Mr. Watkins: Would you please put somebody on that is authorized, that can answer them?

Examiner Yardley: He stated what he wanted to, to me, just a minute ago, Mr. Watkins: it is freight originating on the rail line either of the Seaboard or other rail lines, or destined on the Seaboard or other lines, and that coming by boat, in connection with the truck.

Mr. Oven: That coming in by boat in care of Seaboard Air Line, consigned to interior points.

[fol. 1706] Mr. Watkins: Well, I am satisfied.

Mr. Bliss: He probably also would find himself eventually handling shipments ex-steamship at Jacksonville; as a matter of fact they handle it by truck to Tampa and then by this other truck to Sebring.

Chairman Matthews: There isn't any distinction between interstate freight by water and interstate freight by rail,

is there? If he has interstate rights he could handle either one; and that is what they want, I assume—what the railroads are applying for.

Mr. Bliss: We only want to make it clear what they want. They want everything.

Chairman Matthews: They want to handle interstate freight, whatever that is.

Mr. Watkins: Well Judge, the reason I asked that specific question is because it happens that the Commission has passed on a similar application, and have put such a restriction as I just mentioned to the Judge, in the certificate.

Mr. Oven: They have that right in any application, haven't they?

Mr. Watkins: That is exactly why I asked whether you were willing to have such a limitation put in yours, so the Commission would be informed as to your case.

Chairman Matthews: Is that all?

Mr. Oven: That is all.

[fol. 1707] Mr. Allison: If the Board would be kind enough to allow us a two or three minute recess, maybe we could consolidate our evidence and put it on faster.

Chairman Matthews: We will give you five minutes.

(Brief informal recess was had, 4:21-4:27.)

Mr. Sidney Allen was sworn and testified as follows:

Direct examination.

By Mr. Allison:

Q. Please state your name.

A. Sidney Allen

Q. Where do you live?

A. Tampa.

Q. Tampa, Florida,

A. Tampa, Florida.

Q. What is your business?

A. President, general manager, of the Central Truck Lines.

Q. Mr. Allen, you have been present during this hearing, have you not?

A. A majority of the time; yes, sir.

Q. Does Central Truck Lines serve any of the territory involved in the present application?

A. We serve Winter Haven direct from Tampa, and Winter Haven direct from Jacksonville and Atlanta, and connect to all points involved in this application, by the Hunt Truck Line, Great Southern, and other lines serving that territory.

[fol. 1708] Q. Do you have through rates with those connecting carriers?

A. Yes, sir.

Q. Did Central Truck Lines formerly serve other points in this territory?

A. Yes, sir; we serve all the points involved.

Q. That other territory was disposed of, was it not?

A. Yes, sir.

Mr. Allison: At this point the protestant refers to MC F-481 before the Interstate Commerce Commission.

Q. Mr. Allen, in the——

Chairman Matthews: Which has been granted, hasn't it?

Mr. Allison: Yes, sir.

Q. In the Docket number I have just mentioned, this transfer and sale of this territory was approved by the Interstate Commerce Commission?

A. Yes, sir.

Q. That was sold to whom?

A. Hunt Truck Lines.

Q. At the hearing in that case, did you testify?

A. Yes, sir.

Q. Did you state into that record the reasons for this sale?

A. Yes, sir.

Q. Briefly, what were those reasons?

A. The main reason being that there was not sufficient tonnage for all of the operators serving those points, and that [fol. 1709] the Central Truck Lines were losing money over each mile they operated, due to the lack of tonnage.

Q. Have you available the present schedules operated by Central Truck Lines into Winter Haven?

A. Yes, sir. We have two schedules a day into Winter Haven; one leaving Tampa at approximately 9: p. m., arriving in Winter Haven at approximately 3½ hours afterwards. We have another schedule that leaves out of Lake-

land, which connects with the 12 o'clock schedule out of Tampa, arriving in Winter Haven at approximately 8:30 or 9 o'clock in the morning. We have southbound schedules, one leaving Orlando—which is in direct connection with the Atlanta schedule, leaving Orlando at 6 p. m., arriving at Winter Haven at approximately 8:30 p. m. We have another schedule leaving out of Orlando, that arrives in Winter Haven 12: noon. We have other schedules leaving Atlanta and Jacksonville, that operate into Lakeland and connect with the four Orlando schedules.

Q. Mr. Allen, what is the northern terminal of Central Truck Lines?

A. Atlanta.

Q. And do you have more than one route from Atlanta into Florida?

A. Yes, sir; we have four distinct routes.

Q. One of those routes is via Jacksonville, is it not?

A. Yes, sir.

[fol. 1710] Q. One of those routes is via Lake City, Fla.?

A. Yes, sir.

Q. Then you serve also directly the towns of Ocala, Brooksville, Orlando and Lakeland, do you not?

A. Yes, sir.

Q. What other carriers—motor freight common carriers serve the territory involved in this application?

A. St. Johns River Line Co., Hunt Truck Line, Great Southern serve part of it; Yarnell Transfer & Storage Co. out of Lakeland; Florida Motor Lines on light express.

Chairman Matthews: He asked you about common carriers.

A. Florida Motor Lines on light express; Atlanta Coast Line, Seaboard Air Line.

Q. Wait a minute:

A. Tamiami Trails—strike Coast Line and Seaboard. Tamiami Trail Tours, part of the territory. Star Truck Line.

Q. Mr. Allen, is the Central Truck Lines willing to interchange freight with rail carriers on freight destined to points in this territory?

A. Yes, sir; as far as Winter Haven, we are; yes, sir.

Mr. Allison: That is all; your witness, Judge.

Mr. Oven: No questions.

By Mr. Allison:

Q. Mr. Allen, have you compiled a statement showing tonnage and revenue on freight originating in Tampa, destined for the Ridge section?

—. ——.

[fol. 1711] Q. For the period from March 1st to May 21st 1938?

A. Yes, sir.

Q. Is that the original statement?

A. Yes, sir.

Mr. Allison: I think we might as well file that, and expedite it. That is the only copy I have; I can supply it.

Mr. Oven: I would like to have a copy.

Q. Read it into the record, then: just read that into the record, Mr. Allen.

A. This is a tonnage and revenue report on freight originating in Tampa for Ridge and Mine section, from March 1st to May the 21st. The tonnage in March of 1938 was 146,262 pounds, and the revenue was $487.06. In April, 147,475 pounds; revenue $485. The last 21 days of operation, in May, was 19,203 pounds, with a revenue of $70.38. There is freight transferred through Tampa for this section in March of 1938, was 59,906 pounds, with a revenue of $288.12. In April of 1938, 69,093 pounds, with a revenue of $383.22. In May, the last 21 days, 1,633 pounds, and $16.05 revenue.

Mr. Allison: That is all.

Cross-examination.

By Mr. Oven:

Q. Why did you not take a comparative statement for the last three months, Mr. Allen?

A. How do you mean that, Judge, please sir?

Q. The last three months of 1938.

[fol. 1712] A. We sold out; the last day of operation was on May the 21st.

Q. This is freight handled only by you, is it not?

A. By Central Truck Lines; yes, sir.

Q. Now freight transferred through Tampa, for this section, that is where you brought it in from other points?

A. Yes, sir.

Q. Does this break down intrastate and interstate?
A. No, sir; it is altogether.

Mr. Oven: That is all.

(Witness excused.)

Mr. E. R. Rowland was sworn and testified as follows:

Direct examination.

By Mr. Allison:

Q. Please state your name.
A. E. R. Rowland.
Q. Where do you live, Mr. Rowland?
A. Tampa, Fla.
Q. What is your business?
A. I am manager of the freight division, Tamiami Trail Tours, Inc.
Q. Does Tamiami Trail Tours, Inc. serve any points in the territory involved in this application?
A. They do; we serve Mulberry and Bartow.
Q. What schedules do you operate into those points?
A. One schedule daily, leaving Tampa approximately [fol. 1713] midnight, arriving at Mulberry around 1:30 a. m., Bartow around 2 a. m.
Q. Have you compiled a record of your tonnage into those points?
A. Yes, sir.
Q. Please state that.
A. I am going to have to just read this in there. I might say that these figures include all tonnage, both intrastate and interstate, moved by us into the points named. Do you want this month by month, or the total?
Q. Yes.
A. We will take Bartow first: July 1938, total tonnage of 7114 pounds; August 14,768 pounds; September 13,934 pounds; October 12,708 pounds; November 14,047 pounds; December 7476 pounds. For Mulberry, July 1938 3857 pounds; August 11,209 pounds; September 13,036 pounds; October 8737 pounds; November 11,554 pounds; December 12,438 pounds.
Q. Mr. Rowland, is Tamiami Trail Tours willing to interchange freight with rail carriers, destined to points you serve in this territory?

A. Yes, sir; we are.

Mr. Allison: Your witness, Judge.

Cross-examination.

By Mr. Oven:

Q. Do the rail carriers transfer with you?

A. No, sir.

Q. What route does your truck travel whereby it serves [fol. 1714] Bartow and Mulberry?

A. Leaving Tampa on Route US Highway 92, or State 23, via Plant City; county road to Mulberry, and over State Highway 79 from Mulberry to Bartow.

Q. Is that the termini of that route?

A. No, sir; that is not.

Q. Where does it go beyond that?

A. Arcadia.

Q. Does it go any farther east than that?

A. No, sir.

Q. What other towns between Bartow and Arcadia does it serve?

A. Beg pardon?

Q. What other towns between Bartow and Arcadia do you serve on that route?

A. Wauchula, Fort Meade, Bosworth, and Arcadia of course; and two or three other small points in there that I don't recall now.

Q. Then Bartow and Mulberry alone are only a small proportion of the entire service you render on that route?

A. They are two of the largest towns on the route. As a matter of fact you might say there are only four towns of any consequence on the route.

Q. You serve Plant City before you get there?

A. Yes, sir, five towns.

Q. You don't serve Lakeland?

A. No, sir.

[fol. 1715] Mr. Oven: That is all.

Redirect examination.

By Mr. Allison:

Q. Mr. Rowland, the statement that you made in answer to Judge Oven's question, that you did not now interchange

with rail, is not strictly correct, is it? Do you not interchange passenger traffic with the Seaboard Air Line Railroad at the present time?

A. I believe that is correct.

Q. I call your attention to it.

Recross-examination.

By Mr. Oven;

Q. Do you interchange freight? That is what I had in mind.

A. No, sir.

Q. Where do the passengers go?

A. You couldn't prove that by me, Judge.

Q. Do they go to points on the Seaboard?

A. I couldn't answer that question.

Further redirect.

By Mr. Allison:

Q. What is the northern terminus of Tamiami Trail Tours?

A. I believe Tampa is the northernmost point; possibly Plant City.

Q. On the freight transportation?

A. Yes, sir.

Q. And to the south how far?

[fol. 1716] A. Miami.

Q. To Miami. That is all.

By Mr. Watkins:

Q. Do you maintain joint rates with other truck lines that are members of the Southern Motor Carriers Rate Conference?

A. We do.

Q. And from practically all over the south?

A. All over the south and eastern states.

By Mr. Allison:

Q. Mr. Rowland, there are a number of carriers in this territory hauling exempt products, are there not?

A. Yes, sir.

Mr. Allison: That is all.

By Mr. Bliss:

Q. Mr. Rowland, are you willing to receive shipments from Clyde-Mallory Lines, Bull Steamship Line, Moore & McCormick, and Pan-Atlantic Steamship Co. at Tampa?

A. Yes, sir; and any other steamship lines.

Q. And indirectly you also interchange with boat lines at Jacksonville?

A. Yes, sir.

Q. And you have no prejudice against those shipments?

A. No, sir.

(Witness excused.)

Mr. C. A. Gertner was sworn and testified as follows:

Direct examination.

[fol. 1717] By Mr. Allison:

Q. Please state your name.

A. C. A. Gertner.

Q. Where do you live, Mr. Gertner?

A. Jacksonville, Fla.

Q. What is your business?

A. Trucking.

Q. What company are you with?

A. Great Southern Trucking Co.

Q. What is your official capacity with that company?

A. I am head of the rate department.

Q. You have been present during this hearing, have you not?

A. For the greater part of the time.

Q. Does the Great Southern Trucking Co. operate to any of the points involved in this application?

A. Yes, sir.

Q. Name them.

A. Lake Wales, Bartow, Winter Haven; that's all.

Q. And intermediate points?

A. Yes, intermediate points.

Mr. Allison: We offer this as protestants' Exhibit 9.

Q. This exhibit correctly delineates the operation of the Great Southern Trucking Co.?

A. It does.

Q. Showing northern termini in the states of North Carolina and Tennessee; southern termini in Tampa and Miami, Fla.?

[fol. 1718] A. Yes, sir.

Q. At those northern points do you connect with other motor freight carriers?

A. We do; yes, sir.

Q. Which cover the United States?

A. Yes, sir.

Q. Mr. Gertner, will you please state what schedules Great Southern Trucking Co. has in operation into this territory?

Mr. Oven: Make that more specific; what territory? What part of it?

Mr. Allison: He has stated what points he covers; now I am asking him the schedules into those points which he serves directly.

A. Well on interstate shipments, and freight moving from Tennessee and North and South Carolina, Georgia and Alabama, we have a schedule that leaves Lakeland at 9 a. m., arrives at Auburndale at 9:25 a. m., leaves Auburndale at 9:40 a. m., arrives Winter Haven at 10 a. m., and leaves Winter Haven at 11 a. m.; arrives at Haines City at 11:30 a. m.; leaves Haines City at 12:15 p. m., and arrives at Lake Wales at 1 p. m. Leaves Lake Wales at 2 p. m., arrives at Bartow 2:45; leaves Bartow at 3:45, and arrives at Lakeland at 4:15. We also have a schedule out of Tampa and Miami up to Lakeland, that moves out on this same schedule—the freight from those points moves on this same schedule.

[fol. 1719] Q. Then you have one daily schedule into these points you have named?

A. Daily with the exception of Saturday.

Q. Saturday; that is five days a week, or seven days—six days?

A. Six days.

Q. Have you checked your records to ascertain the tonnage that you have moved into this territory?

A. I haven't checked it; I have some figures that were worked up by our Lakeland agent, that are—that were given to me, and he stated they were correct.

Mr. Oven: We object to any hearsay statement.

Mr. Allison: Just a minute; we have had a lot today, and a little more won't hurt.

Q. Did he prepare that himself?

A. Yes, sir.

Q. Is he a regular employe of the Great Southern Trucking Company?

A. He is.

Q. Has he been in that office——

A. For the past four years to my knowledge.

Q. And this statement was prepared by him?

A. It was.

Q. And delivered to you?

A. And delivered to me; I have the adding machine tape on it.

[fol. 1720] Q. And it has been in your possession since he delivered it to you?

A. Yes.

Mr. Allison: We submit it is admissible.

Mr. Oven: I won't take up any time making any objection.

Chairman Matthews: Just go ahead.

Q. Read it into the record, Mr. Gertner.

A. I have before me here a statement——

Q. Just a moment; let the Judge glance at it, if he wishes.

Mr. Oven: Let him read it in.

A. Statement covering all shipments, that is inter- and intrastate movements of freight. The figures here are inbound into Lake Wales 100,390 pounds; outbound 3042 pounds.

Q. That is for what period?

A. That is—he has consolidated it for the past six-months period.

Q. That is beginning—ending December 31, 1938?

A. Yes; and inbound to Bartow 154,798; outbound 620 pounds. That is all the figures he has given me, except for Lakeland; do you want those?

Q. No. Is the Great Southern Trucking Co. willing to interchange shipments with rail carriers or boat lines?

A. They are; yes, sir.

Mr. Allison: That is all: your witness.

Cross-examination.

[fol. 1721] By Mr. Oven:

Q. You said, Lake Wales 100 and how many thousand pounds inbound?

A. 100,390 pounds.

Q. And outbound, what?

A. 3042 pounds.

Q. Now Bartow inbound 154,000?

A. Yes, sir.

Q. And outbound what?

A. 620 pounds.

Q. 620 what?

A. 620 pounds.

Q. 620 pounds?

A. That is right; we had a bit business there.

Q. Break your truck down.—No further questions. One second; You do not now interchange with the rail lines, do you?

A. Just to points that we don't serve; and then of course we have to apply local rates between points.

(Witness excused.)

Mr. D. E. Hunt, was sworn and testified as follows:

Direct examination.

By Mr. Allison:

Q. Please state your name.

A. D. E. Hunt.

Q. Where do you live, Mr. Hunt?

A. Tampa.

[fol. 1722] Q. What is your business?

A. Truckline.

Q. Do you operate under the name of Hunt Truck Line?

A. Yes, sir.

Q. Do you serve any of the points involved in this application?

A. All of them.

Q. You have been present during this hearing today?

A. Yes, sir.

Q. You heard Mr. Sidney Allen's testimony regarding the sale and transfer to you of certain territory by Central Truck Lines?

A. Yes, sir.

Q. How many daily schedules do you have into this territory?

A. Well the territory is kind of broken up to where it is served by more than one truck. Frostproof and Avon Park and Sebring, is served with one truck a day, leaving Tampa 3:20 in the morning, arriving in Sebring approximately 8:30. That goes by Frostproof and Avon Park.

Q. Do you serve any points in this territory we have been discussing, more than once a day?

A. Yes, sir; we serve Mulberry, Bartow, West Lake Wales, Lake Wales, Winter Haven, Auburndale: I believe that is the names discussed here. We serve all that territory double-daily from Tampa.

Q. What are your times of departure from Tampa?

[fol. 1723] A. Departure is, that territory, is leaving Tampa 6 o'clock in the morning; the furthest destination is 8:30 in the morning, the time the truck gets there; that would be Lake Wales. Then we have Mulberry, that section down in there, the same thing would happen in there, leaving Tampa at 6 o'clock. For the same territory we leave Tampa at 1 o'clock for every point mentioned above except Frostproof, Avon Park and Sebring.

Q. Do you connect with other motor carriers?

A. I do.

Q. And those carriers reach on up in the northeast and northwest part of the country, do they not?

A. Yes, sir; we have had freight—I guess it come from all over the United States, from other trucklines.

Q. This operation is seasonal to some extent, isn't it?

A. Very much.

Q. About how much heavier would you estimate the traffic to be during the winter months, as compared with the summer months?

A. I would say 50%, as a guess.

Q. Have you capacity on your trucks to haul more freight than you are now hauling?

A. Yes, sir.

Q. About what percent do you run loaded, average daily trip?

A. To Frostproof and Avon Park, Sebring, I am running about 40%, I guess, of what I could carry on the same truck.

Q. Are you willing to interchange freight with rail car-
[fol. 1724] riers or boat lines?

A. Be glad to.

Q. Have you information showing the tonnage that you have carried into these points you have mentioned?

A. Yes, sir.

Q. Will you please state what that is?

A. I will have to offer it as evidence; I haven't got it.

(Discussion off the record.)

Q. Read it into the record.

A. 1938, January the 1st to February the 1st, was 450.22; second month was 529.53; 596.47; 510.81.

Q. What months are those for?

A. Beginning January the 1st 1938; fifth was $435. Now that is in Lake Wales, beginning from January the 1st, I took over the Central Truck Lines; five months. Frostproof and Avon Park and Sebring are not split up; it is all together, served in one truck: 783.02; 811.31; 824.31; 634.36; 679.04. That is before we took over the Central Truck Lines; Frostproof, Avon Park and Sebring. Since we took over the Central Truck Lines, to Lake Wales, up until January 20, 1939, beginning the first month, I believe would be June the 1st, would be 488.87; 422.35; 385.89; 582.91; 597.24; 633.52; 712.84; 380.50. Frostproof, Avon Park and Sebring since the Central Truck Lines discontinued in there; 740.72, 745.80, 747.84; 752.72, 1414.91, 1040.73, 984.89 568.68. There is one thing I would like to mention, if I
[fol. 1725] could speak off the record:

Chairman Matthews: Well just a moment. He is reading those amounts out; are we to understand that that is for each month, beginning with January?

A. Yes, sir.

Mr. Allison: He designated the points to which it applied and then the months, and the figures followed in the calendar order of the months.

Q. Mr. Hunt, these are gross revenue figures you have given are they not?

A. Yes, sir.

Q. Subject to charges for operating expense and depreciation and so forth?

A. Yes, sir.

Q. Are you familiar with the schedules of the Star Truck Line?

A. Yes, sir.

Q. What points do they serve in this territory?

A. Mulberry, Bartow, Lake Wales, West Lake Wales, Winter Haven and Auburndale.

Q. Do you know how many schedules they have per day?

A. Yes, sir; they have two, to all points that I have just mentioned.

Q. And when to those trucks leave Tampa?

A. The morning truck leaves Tampa at 5 o'clock, and the afternoon truck leaves Tampa at 1 o'clock, for all points [fol. 1726] mentioned above.

Q. Mr. Allen has called my attention to a schedule operated by Central Truck Lines into that territory, at 1 o'clock; are you familiar with that?

A. Yes, sir.

Q. He does have a schedule at that time?

A. Yes, sir; he leaves Tampa at 1 o'clock.

Q. And that goes to——

A. As far as Winter Haven, by Auburndale and Lake Alfred and Lakeland.

Mr. Allison: That is all; your witness.

Cross-examination.

By Mr. Oven:

Q. What points did you say the Star serve besides Mulberry and Lake Wales?

A. I just mentioned the names that was involved in this case, that they serve: they serve a good many more points that I didn't mention.

Q. But in this territory, Mulberry, Lake Wales, and what else?

A. They serve every point here, and Lake Wales and Haines City, double-daily.

Q. What points involved in our application here?

A. Mulberry, Bartow, West Lake Wales, Lake Wales, Winter Haven, and Auburndale. They serve all the rest of the points in that territory, but that is the only points that is involved in this deal.

[fol. 1727] Q. This statement that you have read into the record here, includes both inter- and intrastate freight?

A. Yes, sir.

Q. And it includes also the entire business of yours and the Central Truck Lines combined, after you took over the Central Truck Lines' operation into Lake Wales and Sebring?

A. Yes, sir.

Redirect examination.

By Mr. Watkins:

Q. You are a member of the Southern Motor Carriers Rate Conference?

A. Yes, sir.

Q. And maintain joint rates with the members thereof?

A. Yes, sir. Be glad to state how many I interchange freight with: every one that touches Tampa.

By Mr. Allison:

Q. Mr. Hunt, one further question: you interchange with carriers who reach the St. Petersburg-Clearwater section and other points?

A. Yes, sir; interchange with the carriers that go throughout the United States.

(Witness excused.)

Mr. J. A. Bliss was sworn and testified as follows:

Direct examination.

By Mr. Allison:

Q. Please state your name.

A. J. A. Bliss; vice-president in charge of traffic, of St. [fol. 1728] Johns River Line Co.

Q. Do you live in Jacksonville, Fla.?

A. Yes.

Q. You have been present during this hearing today?

A. Yes.

Q. Does the St. Johns River Line Co. serve any of the towns in this territory involved?

A. Including the Edwards Line, Hartline Line, we make services to every town involved excepting Lake Wales.

Q. How many schedules per day does St. Johns River Line, Edwards Line, and Hartline Line, operate into that territory?

A. There are three schedules to Winter Haven, and one each to the other points.

Mr. Oven: How many to the other points?

A. One each day. Occasionally the main Sanford-Tampa schedule is put through Winter Haven, when there is sufficient tonnage. In main, this territory is handled, however, on two schedules: one operates out of Lakeland—well both operate out of Lakeland, and one takes a route through Winter Haven, Bartow, Mulberry, and back through Plant City to Lakeland; and the other—that incidentally is done between 6:30 and 10:30 a. m., leaving Lakeland at 6:30 and reaching the towns as soon as possible in the morning. The other schedule which I am trying to find, is missing from what is supposed to be a complete line; but it is in general the same as Mr. Hunt's schedule into that same territory; [fol. 1729] leaves either Lakeland or Tampa, depending upon circumstances, a little bit earlier in the morning, I believe, and gets to Sebring the first thing in the morning, and then peddles back; that is, the deliveries are made during the daylight hours, on the way back. That schedule serves Babson Park, Avon Park, Frostproof and Sebring; and passes through Winter Haven, so that it makes the third schedule into Winter Haven. Incidentally, both of these schedules are so designed as to interchange at Lakeland with both Jacksonville and Tampa freight. These are all capillary schedules, so to speak, and they hitch onto the main arteries at Lakeland.

Q. Mr. Bliss, is St. Johns River Line Co. willing to interchange freight with rail carriers and water carriers, which may be destined to points in this territory?

A. Certainly, and we do interchange very much with water carriers. And I believe I would be correct in saying that we interchange with some rail carriers.

(Discussion off the record.)

By Chairman Matthews:

Q. There is a difference between the rates of the rail carriers and the motor carriers?

A. In some cases yes, and in some cases no. In general the first 7 classes by rail and by motor are the same. The rail lines however protect rates lower than 7th class or 35% of first class.

Q. Well now would you be willing to interchange freight [fol. 1730] with a rail carrier on classes below 7th class and take your proportion of the rate?

A. Absolutely. We have followed that policy ever since the railroads started accusing us of taking the cream and leaving them to do the dirty work; and we have endeavored to so conduct our business that in the territories that we serve, the rail lines could withdraw tomorrow without hurting the public.

Q. But your situation in that is rather distinctive, is it not? All the motor carriers don't take freight below 7th class, except on some commodity tariff?

A. We have had our worries with them on that subject, and I really can't testify as to their attitude other than to say that I believe they are swinging around a bit.

Q. But I am speaking now of their published tariffs.

A. Well I am talking about their tariffs.

Q. That is the best evidence.

A. Well their tariffs have begun to include more and more of the lower rated articles.

Q. What I am wondering, Mr. Bliss, is how—several of the motor carriers have testified here today that they are entirely willing to interchange with the rail carriers; and I am wondering how they would overcome these difficulties that I seem to see in the way of that interchange.

A. Well I can tell you how we would overcome it; and that is by simply taking our proportion of the rate, what- [fol. 1731] ever it was. Now I will make this exception; of course we are talking about l. c. l. freight, anyway;

Q. Yes.

A. But in carload freight, in a case where the car is the package, like a tank car, and so on, we obviously can't interchange on that; but I will state flat footedly so far as our line is concerned, on any l. c. l. traffic, that if the Seaboard Air Line or any other railroad wanted to make interchange arrangements, that assuming the division is equitable,

bearing some fair relation to the mileage, the measure of the rate would not enter into it.

Q. In other words, you would be willing to take a fair proportion of the rail rate, whether it was higher or lower than your tariff rate?

A. Yes; sure.

Q. There would have to be some sort of a special dispensation to permit that, wouldn't there?

A. No, there would be no difficulty at all about publishing such a tariff; so far as the legal difficulties are concerned. Now I think that the rail lines have a union or combination of some sort that would forbid the Seaboard Air Line from entering into such arrangements; I have been unable to get them to confess that they have such private agreement with the other rail carriers, but I think that is the only thing holding it up. So far as the filing of a tariff is concerned, [fol. 1732] it is very simple; the main difference is, you have to send in five copies to Washington instead of two.

Q. I had in mind—the filing of a tariff would be a simple matter, doubtless; but I had in mind working out the details of it and arriving at something that would be a satisfactory basis.

A. Well I see no difficulties from our point of view.

Q. But you couldn't speak for the entire truck operations; you are speaking from your own company's point of view?

A. Obviously.

By Mr. Allison:

Q. Mr. Bliss, is your operation into this territory profitable?

A. We are inclined to believe that it is; our operations in general are profitable but we are inclined to believe that this operation is one of the weakest links, due to the small amount of traffic down in that territory. And if the Seaboard were to be granted its application here, and took much traffic away from the presently established lines, we might have to follow Mr. Allen's example and reach a deal with Mr. Hunt.

Q. Did you want to make a statement about your tonnage?

A. I don't know that the tonnage figures are very important, other than to indicate that we have plenty of ca-

pacity to handle additional shipments, if any should be offered us. I think I just as soon make that statement: that the tonnage has been so low that it is obvious that we could [fol. 1733] handle a great deal of additional tonnage; and then if Mr. Oven wants to cross examine on that.

Mr. Hunt: You could handle as much again as you are handling, couldn't you?

A. Pretty well.

Cross-examination.

By Mr. Oven:

Q. Don't you think all of the carriers have ample capacity to handle interstate tonnage?

A. Yes, I believe that they all do.

Q. Rail and truck?

A. Well, I don't know that I can quite understand the rail system's operation, and its schedules of package cars, and one thing and another, well enough to judge whether its lines are being used efficiently or not.

Q. You make that under oath, do you?—that statement?

A. Well, I would not make a statement under oath that I believe you are running your railroads, as railroads, efficiently enough to where you can say that you have exhausted all such resources and have to ask for a truckline certificate.

Mr. Oven: No further questions.

By Examiner Yardley:

Q. Do I understand you operate two schedules in this particular territory?

A. Yes; two loops.

Q. Well if they don't operate to capacity, why is it you only—why don't you operate just one? Or is it because [fol. 1734] your line wants to give service, and for that reason you operate?

A. Well, it is because we want to give service, and we figured it out and studied over it and decided that in order to take care of the freight coming from so many different directions, Tampa and Jacksonville, and coming into a funnel-point at Lakeland, that it was necessary to have these trucks, that would be employed—two trucks that are

running at the same time, and they are employed only in the morning, they do their work between 6 in the morning usually, and noon.

Q. Does the fact that some of your competitors give two schedules a day, have anything to do with it?

A. Well, we haven't met our competitors in the sense of two schedules, night and day, one in the morning and one in the afternoon; we haven't been able to do that; but we have endeavored to arrange our schedules so that every point gets an early morning delivery; so we split it up into two trucks. Those two trucks can each handle a great deal more than they are now handling, on those deliveries.

(Witness excused.)

Mr. Allison: That is all the evidence by the protestants.

Examiner Yardley: Judge Oven, your application covers express and mail. I haven't heard anything about express today.

Mr. Oven: No, sir. I didn't know it covered that, so far as interstate was concerned. I knew it did intrastate. Of course it would follow, that would go on the same truck, at [fol. 1735] the same time; get there no quicker and no later.—Just a second:—We do not intend to insist on that; just drop the mail, for the present.

Mr. Bliss: And express?

Mr. Oven: Mail and express; we have that under the State Commission's authority, but we don't care to handle it this way.

Chairman Matthews: Applicant's Exhibits numbered 2 to 8 inclusive, and Protestants' Exhibit #9, received in evidence.

(Exhibit 2, witness Leverette, #3 witness Scarborough, #4 witness Canova, #5 witness Lenn, #6 witness Lewis, #7 witness Lewis, #8 witness Hagood, and #9 witness Gertner, received in evidence.)

Chairman Matthews: If there is nothing further, the Board will take the matter under advisement, and adjourn:

Mr. Oven: It is agreed between counsel for the applicant and counsel for protestants, that the pending applications now before the Interstate Commerce Commission on the part of the Receivers of the Seaboard Air Line Railway, may be referred to in the briefs of protestants and/or applicant.

Examiner Yardley: No briefs to be filed?

Mr. Oven: I would like to ask authority to file one. I don't know what time the Board feels would be sufficient.

Examiner Yardley: Briefs will be due February 20th. In the event an extension of time is desired for filing of briefs, request must be in Washington 7 days before the [fols. 1736-1737] Brief date. File a copy with the Examiner and with the Joint Board members, as well as copies to all parties, and with the Washington office.

(At 5:22 o'clock p. m., January 23, 1939, hearing closed.)

[fol. 1738] BEFORE THE INTERSTATE COMMERCE COMMISSION

MC 86687

SEABOARD AIR LINE RAILWAY (LEGH R. POWELL, JR., and Henry W. Anderson, Receivers), Motor Operation—Gaston-Garnett, S. C.

MC 86687 (Sub. No. 1)

SEABOARD AIR LINE RAILWAY (LEGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—McBee-Sumter, S. C.

MC 86687 (Sub. No. 2)

SEABOARD AIR LINE RAILWAY (LEGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Henderson-Raleigh, N. C.

MC 86687 (Sub. No. 3)

SEABOARD AIR LINE RAILWAY (LEGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Hamlet, N. C.-Columbia, S. C.

MC 86687 (Sub. No. 4)

SEABOARD AIR LINE RAILWAY (LEGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Hamlet-Raleigh, N. C.

[fol. 1739] MC 86687 (Sub. No. 5)

SEABOARD AIR LINE RAILWAY (LEIGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Hamlet-Wilmington, N. C.

MC 86687 (Sub. No. 6)

SEABOARD AIR LINE RAILWAY (LEIGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Monroe-Rutherfordton, N. C.

MC 86687 (Sub. No. 7)

SEABOARD AIR LINE RAILWAY (LEIGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Richmond, Va.-Henderson, N. C.

MC 86687 (Sub. No. 8)

SEABOARD AIR LINE RAILWAY (LEIGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Greenwood-Great Falls, S. C.

MC 86687 (Sub. No. 9)

SEABOARD AIR LINE RAILWAY (LEIGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Jacksonville-Live Oak, Fla.

MC 86687 (Sub. No. 10)

SEABOARD AIR LINE RAILWAY (LEIGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Live Oak-River Junction, Fla.

[fol. 1740] MC 86687 (Sub. No. 15)

SEABOARD AIR LINE RAILWAY (LEIGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Monroe-Waxhaw, N. C.

MC 86687 (Sub. No. 18)

SEABOARD AIR LINE RAILWAY (LEIGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Jacksonville-Fernandina, Fla.

MC 86687 (Sub. No. 19)

SEABOARD AIR LINE RAILWAY (LEIGH R. POWELL, JR., and Henry W. Anderson, Receivers), Extension—Tampa—Sebring, Fla.

Sir Walter Hotel, Raleigh, N. C.,
November 12, 1941.

Before V. J. Livingstone, Examiner

Met pursuant to notice, at 9 a.m.

APPEARANCES:

Charles T. Abeles and William H. Delaney, Seaboard Air Line Railway Building, Norfolk, Va., appearing for Seaboard Air Line Railway, applicant.

J. Ninian Beall, 1424 16th Street N. W., Washington, D. C., appearing for American Trucking Associations; [fol. 1741] Keeshin Motor Express Company; Seaboard Freight Lines, Inc., protestants.

Reuben G. Crimm, 808 Bona Allen Building, Atlanta, Ga., appearing for Southern Motor Carriers Rate Conference, protestants.

C. H. Noah, Box 341, Burlington, N. C., appearing for Barnwell Bros., Inc., Horton Motor Lines, Inc., Thurston Motor Lines, and New South Express Lines, protestant.

W. R. Leland and H. Y. McPherson, 75 Ivy Street, Atlanta, Ga., appearing for Transportation, Inc., protestants.

Clifford T. Inglis, 410 Atlantic National Bank Building, Jacksonville, Fla., appearing for Flamingo Truck Lines, Inc.; Central Truck Lines, Inc.; Great Southern Trucking Company; St. John's River Line Company; K & L Transportation Company, Inc.; D. E. Hunt d/b/a Hunt Truck Line, protestants.

C. M. Mulholland, 1040 Nicholas Bldg., Toledo, Ohio, appearing for Railway Labor Executives' Association, protestants.

R. C. Atwood, 340 Hughes Street, Greensboro, N. C., appearing for Motor Transit Company, protestant.

H. C. Smiley, 132 E. Iowa, Memphis, Tennessee, appearing for Potashnick Local Truck System, Inc., Campbell Sixty Six Express, Inc.; Powell Bros. Truck Lines, Inc., Gordons

Transports, Inc., Highway Express Inc.; E. E. Haskett d/b/a Blue Streak Express, interveners for protestants. [fols. 1742-1743] Arne C. Wiprud, Special Assistant to the Attorney General, Department of Justice Building, Washington, D. C., appearing for Anti-trust Division, Department of Justice, Interveners.

[fol. 1744] PROCEEDINGS

Examiner Livingstone: Gentlemen, the Interstate Commerce Commission has set for further hearing at this time and place dockets indicated on the hearing notice, MC 86687 and the various subs, assigned for further hearing solely to determine whether condition 3 as set forth in the prior report, 28 M. C. C. 5, should be modified, and if so, the extent of such modification, on the 12th day of November, 1941.

Appearances for applicant?

Mr. Abeles: Charles T. Abeles and William H. Delaney, of Norfolk, Virginia.

Exam. Livingstone: You are both registered practitioners, I presume?

Mr. Abeles: Yes, sir.

Exam. Livingstone: Protestants?

Mr. Beall: J. Ninian Beall, 1424-16th St., N. W., Washington, D. C., for the American Trucking Associations, Keeshin Motor Express Co., and Seaboard Freight Lines, Inc. I am a registered practitioner.

Mr. Crimm: Reuben G. Crimm, 808 Bona Allen Building, Atlanta, Georgia, appearing for the Southern Motor Carriers Rate Conference. Registered practitioner.

Mr. Noah: C. H. Noah, Box 341, Burlington, N. C., appearing for Barnwell Bros., Inc., Horton Motor Lines, Inc., and Thurston Motor Lines, and New South Express Lines, protestants.

[fol. 1745] Mr. Leland: W. L. Leland, 75 Ivy Street, Atlanta, Georgia, appearing for Transportation, Inc. in an official capacity.

Mr. McPherson: H. Y. McPherson, 75 Ivy Street, Atlanta, Georgia, appearing for Transportation, Inc., an official of the Company.

Mr. Atwood: R. C. Atwood, 340 Hughes Street, Greensboro, North Carolina, representing Motor Transit Company of Raleigh, North Carolina. I am a bona fide employee of this company.

Mr. Mulholland: C. K. Mulholland, 1040 Nicholas Building, Toledo, Ohio, appearing for the Railway Labor Executives Association.

Mr. Inglis: Clifford T. Inglis, 410 Atlantic National Bank Building, Jacksonville, Florida, appearing for Flamingo Truck Lines, Inc.; Great Southern Trucking Company; St. Johns River Line Company; Central Truck Lines, Inc.; K & L Transportation Company, Inc.; D. E. Hunt, doing business as Hunt Truck Line. I am admitted to practice.

Exam. Livingstone: Are there any further appearances for protestants? (No response.)

Interveners?

Mr. Smiley: H. C. Smiley, 132 E. Iowa, Memphis, Tenn., appearing for Potashnick Local Truck System, Inc., Campbell Sixty-Six Express, Inc., Powell Bros. Truck Lines, Inc., Gordons Transports, Inc., Highway Express, Inc., E. E. Haskett, doing business as Blue Streak Express. We are [fol. 1746] appearing as interveners supporting the position of the protestants. I am a registered practitioner.

Mr. Wiprud: Arne C. Wiprud, Special Assistant to the Attorney General, Department of Justice Building, Washington, D. C., appearing for Anti-Trust Division, Department of Justice.

(Discussion off the record.)

Mr. Abeles: May I make a statement for the record before we start?

Exam. Livingstone: Yes, sir.

Mr. Abeles: We are advised for the first time of the intervention of the Anti-Trust Division of the Department of Justice, of the Attorney-General's office, and I have just been presented with a letter of application for intervention in which the reasons are set forth, which apparently conceives of this hearing as presenting questions arising under the Sherman Act. I want to point out that the purpose of this proceeding is not to determine the question of public convenience and necessity involved in the operation by the applicants here of the truck services which are covered by the various proceedings which are involved, but merely whether or not certain conditions heretofore imposed by previous orders of the Commission should be modified and if so, to what extent. I would like to make sure whether Mr. Wiprud understands that to be the case.

[fol. 1747] Mr. Wiprud: Yes, I think the Division understands that to be the case.

Mr. Abeles: It will go to the entire issue of the granting of the certificates and is not confined to the issues which are really before the Commission in this proceeding. I am making this statement merely to clear up the record so there won't be any misunderstanding as to the scope of this particular proceeding.

Mr. Wiprud: I understand that counsel is raising an objection to the intervention?

Mr. Abeles: Not at all, no, sir.

Mr. Beall: In order that the record may be straight, it is necessary for me to say I don't agree with Mr. Abeles with respect to the scope of this investigation. I take it that this is concerning the matter of convenience and necessity; what the Commission granted and found to be necessary was with certain restrictions. Now we have petitions to modify the restrictions, which goes back to the root of the findings in the first instance. It is necessary to find convenience and necessity with respect to the modification of what was granted in the first place.

Mr. Abeles: I would like to point out the order expressly provides that the proceedings are assigned for further hearing "solely to determine whether Condition 3 as set forth in the prior report, 28 M. C. C. 5, should be modified, and if so, the extent of such modification."

[fol. 1748] Exam. Livingstone: Is there anything further?

Mr. Wiprud: I merely want to add that when I stated to counsel that I understood what he stated, I merely meant to indicate that I understood that was his position in respect to this hearing. We want to wait until there are any developments before we state what we understand the scope of the hearing is.

Mr. Inglis: May I inquire if the particular subs involved in this hearing are those set forth in the order of the Commission setting the case for hearing, or are they those set forth in the Seaboard petition for modification?

Mr. Livingstone: The subs are indicated on the notice of hearing that are involved in this case.

Mr Inglis: May I call your attention to an apparent variance? There seems to be more mentioned in the notice than are mentioned in the Seaboard petition for modification.

Mr. Abeles: That is correct, and the reason for that will be brought out in the course of the testimony.

Exam. Livingstone: If this will change your position any, you can have a recess. This Department of Justice proposition, does it change your position?

Mr. Abeles: No, I don't see any.

Exam. Livingstone: Very well. Proceed.

Mr. Abeles: I will call Mr. Arnold.

[fol. 1749] C. D. Arnold was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Arnold, state your name, residence and occupation.

A. C. D. Arnold, Norfolk, Va., Assistant to General Manager, Seaboard Air Line Railway.

Mr. Beall: I would like to inquire of counsel if he has a map.

Mr. Abeles: It is going to be introduced.

Examiner Livingstone: I will have the witness go very slowly, so I hope everybody will be able to follow this.

By Mr. Abeles:

Q. How long have you been in railroad service?

A. 37 years.

Q. What has been the general nature of your experience?

A. I have been engaged entirely in the Operating Department and have occupied the position of Assistant to the General Manager for sixteen years.

Q. In the course of your duties, Mr. Arnold, have you had occasion to familiarize yourself with the location and details of the truck operations which the Receivers of the Seaboard have been authorized to perform by the Interstate Commerce Commission?

A. I have.

Q. Are you familiar with the orders of the Commission [fol. 1750] dated July 11, 1939, in 17 MCC 413, and January 24, 1941, in 28 MCC 5, and the restrictions imposed by those orders upon the Seaboard's truck operations, particularly Restriction 3 in the order of January 24, 1941?

A. I am.

Mr. Abeles: I would like to point out at this stage while technically the applicants here are the receivers of the Seaboard, they will be referred to generally as the Seaboard.

Exam. Livingstone: All right sir.

By Mr. Abeles:

Q. Have you made a study of the effect of the restrictions imposed by Condition 3 of the order of January 24, 1941, upon the Seaboard's truck operations?

A. Yes, sir.

Q. Have you a map which shows the truck routes involved in these proceedings and the key stations on these routes named in the Commission's order of January 24, 1941?

A. I have, and offer it in evidence as Exhibit 1.

(Applicant's Exhibit 1, Witness Arnold, marked for identification.)

Q. Will you now proceed to make such explanation of this may as you deem necessary?

A. On this map we have shown the routes involved in the present proceedings with the stations served. The key stations named in the order of January 24, 1941, are indicated [fol. 1751] in red, all other stations in black, except that on the route between Gaston and Garnett the red stations are not key stations but indicate the restriction of the order with reference to the transportation of freight from Gaston or Garnett to certain stations named in the order which are on this route also indicated in red.

Q. You might point out just where the Gaston and Garnett route is.

A. The Gaston and Garnett route is on the line between Savannah and Columbia, South Carolina.

Q. Proceed.

A. The significance of the colored lines parallel with the white line is to show distinctly the limits of the routes for which separate certificates have been issued. The figures shown in parentheses after the name of each station represent the population of the various towns, based, where available, upon the 1940 census, otherwise from the best obtainable source.

Q. Before taking up your discussion of the individual routes do you wish to make a preliminary statement bearing upon the general subject here under consideration?

A. Yes. There are a number of points on the Seaboard Railway to which package cars are loaded from the large northern, eastern, and western cities.

Richmond, Va., received package cars from Philadelphia, [fol.1752] Baltimore, Washington, Helmetta Transfer, N. J., Detroit, Chicago, Cincinnati, Huntington, W. Va., Roanoke and Lynchburg, Va., these cars all containing freight for distribution from Richmond to points on the Seaboard Railway south thereof.

At Portsmouth, Va., a large tonnage of l. c. l. freight is received from coast-wise steamer lines from Baltimore, Philadelphia, New York, Boston, and Providence, and Portsmouth loads this freight in package cars for Seaboard Railway points, such as Henderson, Raleigh, Hamlet, Charlotte, Greenwood, etc.

Hamlet, N. C., is not a large community, but is the principal transfer station on the Seaboard.

Mr. Smiley: The points you have named are the points to which the package cars are routed from Portsmouth?

The Witness: That is right.

Mr. Smiley: Thank you.

The Witness: Hamlet, N. C., is not a large community, but is the principal transfer station on the Seaboard. Package cars are received there from Washington, Providence, Cleveland, Chicago, Pittsburg, Philadelphia, Wilkes-Barre, Cincinnati and from Spencer Transfer, on the Southern Railway; from Richmond containing freight transferred at that point from northern and eastern cities, and from Portsmouth containing freight received from steamer lines; also package cars from distant points on the Seaboard Railway, such as Atlanta, Birmingham, Savannah and Jacksonville. [fol. 1753] Charlotte, N. C., receives package cars from Chicago, Cincinnati, and from Johnson City, Tenn., a transfer point on the Clinchfield Railroad, containing freight from Western points; also package cars from distant cities on the Seaboard Railway, such as Richmond, Portsmouth and Atlanta.

Jacksonville, Fla., received package cars from Washington, Chicago, Cincinnati, Cleveland, Louisville, Memphis, New Orleans, St. Louis, Philadelphia, and Pensacola, Fla. Jacksonville also received a large tonnage of l. c. l. freight from coast-wise steamers.

Tallahassee, Fla., receives package cars from Atlanta, Birmingham, Montgomery, Alabama, and Columbia, Georgia, all containing freight from western cities.

Tampa, Fla., receives package cars from Chicago, Cincinnati, St. Louis, Richmond, Hamlet, N. C., and Montgomery, Ala., and also a quantity of freight from steamer lines.

It is the efficient and expeditious distribution of this package car freight to its ultimate destination with which we are very much concerned. As a general example, the difficulties at other points to be later explained, the restrictions imposed by the order of January 24, 1941, in these cases make it impossible to handle by motor vehicle from Richmond to Petersburg, or any point south of Petersburg, the freight received in package cars from distant northern, eastern and western points, and on the package car freight received at Hamlet, the motor vehicle would be [fol. 1754] restricted to distances of 12½ miles on the Wilmington route, sixteen miles on the Columbia route and fourteen miles on the Raleigh route.

Q. Will you now proceed to take up each of the routes involved in this proceeding, and state how and why we desire the key stations designated in the order of January 24, 1941, modified?

A. Yes. In doing so I will start at the northern end of the system and proceed southwardly rather than follow the order of the docket numbers. The first will be between Richmond, Va., and Henderson, N. C., Docket MC 86687, Sub 7.

Q. Is this route in operation?

A. Only between Petersburg, Va., and Bracey, Va.

Q. Why has the entire service not been inaugurated?

A. The certificate for this route originally granted in the report and order of July 11, 1939, 17 M. C. C. 413, contained the prior or subsequent rail-haul restriction. This was amended by the key station plan set forth in the report and order of January 24, 1941, 28 M. C. C. 5. The restrictions placed by both of these orders made it impossible to accomplish affectively the purposes for which certain of these services were designed, and their inauguration has therefore been held in abeyance pending the outcome of any effort to solve the difficulties by a satisfactory revision of the restrictions.

[fol. 1755] On this route Richmond and Petersburg, Va., and Henderson, N. C., have been named as key stations. The distance from Richmond to Petersburg is twenty-three miles, and from Petersburg to Henderson ninety-one miles. Regular package cars are operated on this route only from Richmond to Petersburg, Richmond to Henderson, Petersburg to Richmond and Henderson to Richmond.

I previously mentioned the package cars received at Richmond from distant off-line northern, eastern and western points. Richmond accumulates l. c. l. business from cars received from other Seaboard points and loads through package cars to northern, eastern, and western points, for example York, Pa., Baltimore, Lynchburg, Roanoke, western points on the C. & O. Ry., and the Cedar Hill transfer on the New Haven Railroad for New England points.

If Petersburg is named a key station it will prevent forwarding from Richmond by truck shipments destined to stations intermediate between Petersburg and Henderson.

Q. You mean forwarding by truck from those stations, you mean forwarding wholly by truck do you not?

A. That is right.

Q. Proceed.

A. —or to Richmond from stations intermediate between Henderson and Petersburg, or from Henderson to points intermediate between Petersburg and Richmond. Richmond is the principal wholesale distributing center for this particular territory, and this restriction would make it necessary for all shipments originating at Richmond or [fol. 1756] delivered to us by connections at that point destined to stations intermediate between Petersburg and Henderson to be loaded in cars at Richmond and transported to some station south of Petersburg and there unloaded and transferred to the truck. Although the truck could handle from such stations south of Petersburg shipments which arrived by package car from Richmond the previous night and make deliveries beyond as early as could be accomplished by handling the shipment wholly by truck from Richmond, transfer of the lading and the use of a car which could otherwise be dispensed with would result. It would not be practical to load these shipments in the Richmond to Petersburg package car because at Petersburg the freight station is located some distance from the main line. Petersburg cars are set out by the trains in the yard adjacent to the main line and must be switched by the yard

engine from there to the freight station, a distance of something over half a mile. The yard crew at this point does not go on duty until 8:30 A. M., whereas the truck will leave Richmond at 6:00 A. M., and pass Petersburg at 7:00 A. M.

Therefore the transfer of this traffic from car to truck must be made at some point south of Petersburg (it is now made at Alberta), thus requiring the use of a car which could be eliminated if the truck handled this business all the way from Richmond.

[fol. 1757] Northbound shipments originating at stations intermediate between Henderson and Petersburg destined to Richmond or beyond would have to be unloaded from the truck at Petersburg and loaded in a car for Richmond, whereas, it could have been carried through to Richmond on the truck without changing the schedule of the truck. The transfer of the freight from the truck to car at Petersburg, however, would entail delay to the freight.

The truck will pass Petersburg at 3:00 P. M., and arrive at Richmond at 4:00 p. m. The train on which the package cars from Petersburg to Richmond are handled leaves Petersburg between 6:00 and 8:00 A. M., and arrives at Richmond at 7:00 to 10:00 A. M. The interstate business from points south of Richmond moves beyond that point over connecting railroads. The cars of the connecting carriers on which these shipments are handled close at about 5:00 P. M. and leave Richmond in the early evening. Accordingly, if the truck could handle interstate traffic through to Richmond the connection of these trains could be made, whereas if Petersburg is not eliminated as a key station and freight from points south thereof must be transferred to cars at that point, the shipments would not arrive at Richmond until the following morning, involving a 24-hour delay. For the same reason it is desired to handle intrastate freight originating at Petersburg proper and consigned to points beyond Richmond wholly by truck, that [fol. 1758] is wholly by truck from Petersburg to Richmond.

As I have previously stated, at the present time freight for points south of Petersburg to and including Bracey, Va., the present terminus of the truck, is loaded at Richmond in a car that is set out at Alberta, Va., and from there distributed by truck. This car could be eliminated if the

shipments could be handled by the truck from Richmond through Petersburg.

At the present time freight for points between Bracey, Va. and Henderson is loaded by Richmond in the Henderson package car and transferred at that point to a peddler car, which is handled northward from Henderson and peddled by a local freight train. If these shipments could be handled from Richmond through Petersburg on the truck, the additional handling at Henderson and movement of the peddler car from Henderson could be eliminated, saving twenty-five cars per month, and advancing the delivery of this freight twenty-four hours. The truck would deliver this traffic between the hours of 11:00 A. M. and 12:40 P. M., whereas the local freight on which the peddler car is handled does not leave Henderson until 8:00 P. M., or later.

It is necessary for Henderson to load approximately triweekly a car containing freight for stations now served by the truck between Bracey and Petersburg, which is set out at La Crosse and distributed from there by the truck. [fol. 1759] When the truck is extended through to Henderson this car will be eliminated, and daily service will be provided.

Under the restrictions imposed by the order of January 24, 1941, we cannot use our trucks for handling traffic moving in either direction between Richmond and Petersburg, between Richmond and Henderson, or between Petersburg and Henderson. For the reasons I have explained, the only limitation which could be imposed upon the truck service over this route without seriously impairing the benefits to be derived would be to restrict the handling by truck of traffic moving from Richmond to or through Henderson, from or through Henderson to Richmond, and from Richmond to Petersburg proper, but not traffic moving from Richmond through Petersburg to points south thereof between Petersburg and Henderson. Besides the operating benefits which I have heretofore described, the modification to this extent of the restrictions now imposed will save regularly at least two cars a day.

Q. Mr. Arnold in order to make entirely clear what you have stated with reference to the restrictions to which we would not object, you say that we could be restricted without seriously impairing the benefits to be derived from the coordinated truck service in the handling by truck if traffic moved from Richmond to or through Henderson. By that

you mean, I understand, traffic which comes to us at Richmond and is consigned either to Henderson or to Points south thereof, is that correct?

A. Yes, sir.

Q. And when you say from or through Henderson to Richmond, you mean traffic which comes to us either at Hender-
[fol. 1760] son or points south of Henderson consigned to Richmond or beyond, is that correct?

A. That is right.

Q. Now you have frequently referred to the necessity of handling this l. c. l. business by peddler car if the restictions now imposed are observed. Does that have any effect upon the operations of the local trains, not on the movement, but it does require peddler car service by the train?

A. That is right.

Q. Which may in some instances delay its schedule, I presume.

A. That is correct.

Q. Exam. Livingstone: How do the parties feel about cross-examining on each particular route or do you want to wait until the entire direct testimony has been put in, is it agreeable to the parties then to proceed with the testimony and cross-examine at the end of it?

Mr. Noah: Yes.

By Mr. Abeles:

Q. Will you now proceed with your discussion of the route between Henderson, N. C., and Raleigh, N. C., Docket MC 86687, Sub 2.

A. These trucks are not yet in operation. On this route Henderson and Raleigh have been designated as key stations.

This truck service was designed to eliminate the oper-
[fol. 1761] ation of all package and peddler cars between Henderson and Raleigh in either direction and the expedite deliveries.

At the present time, we have tri-weekly local service operating between Henderson and Raleigh, leaving Raleigh on Mondays, Wednesdays, and Fridays at approximately 8:00 A. M. and arriving Henderson 3:00 to 7:00 P. M., and leaving Henderson on Tuesdays, Thursdays and Saturdays at 9:15 A. M., arriving Raleigh at approximately 6:00 to 8:00 P. M.

Raleigh loads a car daily which moves to Henderson during the night. On alternate days, a peddler car is forwarded north from Raleigh on local No. 66, peddling to intermediate stations. The other days, the car loaded to Henderson is worked back as a peddler car on local train No. 65.

Q. One moment, as I understand the statement which you have just made on the days in which a local train is not operated from either Raleigh or Henderson, the traffic consigned between Raleigh and Henderson is carried to the terminal point and peddled back by the local train and which is operated on that day, is that correct?

A. Not always from Henderson but from Raleigh, yes.

Q. But it is delivered to one of the other of those points dependent upon whether the local train is operating from the point that day is that correct?

A. Generally speaking, that is correct.

Q. So that involves a backhaul on those days?

[fol. 1762] A. That is right.

Exam. Livingstone: Proceed.

A. During the month of September, Henderson loaded to Raleigh only ten cars, but on alternate days, a peddler car was forwarded from Henderson on local No. 65 on twelve days.

Freight received at Henderson at the present time in package cars from Richmond and Portsmouth arrives at Henderson at night and is distributed tri-weekly, Tuesdays, Thursdays, and Saturdays, on local No. 65 leaving Henderson at 9:15 A. M., and arriving at Raleigh 6:00 to 8:00 P. M. The truck operation proposed would give daily service from Henderson and provide early morning delivery at all stations from Henderson to Raleigh, leaving Henderson 6:00 to 6:15 A. M.

Shipments from Raleigh are now delivered by train No. 66 tri-weekly, leaving Raleigh Mondays, Wednesdays, and Fridays at 8:00 A. M., arriving at Henderson 3:00 to 7:00 P. M.

Q. You say shipments are now delivered by train No. 66, you are speaking of deliveries on this route are you not?

A. Yes, the train only runs on this particular route.

Q. Proceed.

A. On alternate days, it is forwarded to Henderson by package car and peddled back on train No. 65, leaving

Henderson at 9:15 A. M. The truck operation would forward these shipments from Raleigh at 1:30 A. M., giving [fol. 1763] early morning delivery at all stations from Raleigh to Henderson, arriving 5:00 A. M.

These tri-weekly locals picking up shipments at points intermediate between Raleigh and Henderson do not arrive at Raleigh or Henderson in time for forwarding in package cars leaving those points the same evening, whereas the truck service leaving Raleigh at 1:45 P. M. and arriving at Henderson 5:00 P. M. would permit the forwarding of that freight the same evening in package cars loaded at Henderson. Thus, the movement of this freight would be advanced twenty-four hours.

Q. You are now speaking of another truck schedule on this route are you Mr. Arnold?

A. No. The truck runs out of Raleigh on the first trip at 1:30 A. M.

Q. That is on the North Bound movement?

A. On the Northbound movement on the second trip at 1:45 P. M.

Q. There will be two schedules?

A. No, two trips in here.

Q. On this route?

A. On this route.

Q. That is what I was trying to point out. From what you have said Mr. Arnold, I understand, that we desire to eliminate the operation of all package and peddler cars [fol. 1764] now operated between Henderson and Raleigh, and that this will be possible only if the truck can be operated without restriction not only to and from the intermediate points, but also between Henderson and Raleigh.

A. That is correct. These package cars are not in the class of through package cars because the total distance from Henderson to Raleigh is only 43 miles. Henderson will continue to receive through package cars from Richmond and Portsmouth and Raleigh will continue to receive through package cars from Richmond and Portsmouth and from Hamlet, N. C., as well, but by the restriction imposed by the order of January 24, 1941, we would be prevented from handling from Henderson or from a point north of Henderson through Henderson to Raleigh, or from Raleigh or a point south thereof through Raleigh to Henderson, and would therefore, be compelled to continue the opera-

tion of lightly loaded local package cars between these two points.

Q. You say we had been prevented from handling between these two points you have named, I presume you mean handling by truck?

A. That is correct.

Q. If we are permitted to handle shipments from Henderson to Raleigh and from Raleigh to Henderson by truck will any restrictions upon the highway service performed on this route remain?

[fol. 1765] A. Yes. As I have explained in connection with the Richmond-Henderson route, there would be a restriction against handling traffic from Richmond to or through Henderson, and, as I will later point out in connection with the Raleigh-Hamlet route, there will be a restriction against handling shipments from Hamlet to or through Raleigh.

Q. So that, as I understand you, we will still be prohibited from handling long distance l.c.l. shipments wholly by truck.

A. That is correct.

Q. Please now take up your discussion of the route between Raleigh, N. C., and Hamlet, N. C. Docket MC 86687, Sub 4.

A. Before discussing this route in detail I would like to say that the truck service out of Hamlet on three routes, that is Hamlet to Raleigh, Hamlet to Wilmington, and Hamlet to Columbia-Hartsville, was designed to coordinate with through package cars moving from Charlotte at 10:30 P. M., arriving at Hamlet at 2:40 A. M. The truck from Hamlet to Raleigh is scheduled to leave Hamlet at 3:35 A. M., from Hamlet to Columbia at 4:30 A. M., and from Hamlet to Wilmington at 4:00 A. M., these schedules being designed to handle the shipments arriving at Hamlet on the Charlotte package car for early morning delivery.

Raleigh, Apex, Sanford, Southern Pines, Aberdeen and Hamlet have been designated as key stations on this route. The distances between these key stations are as follows:

[fol. 1766] | | |
|---|---|
| Raleigh to Apex | 15 miles |
| Apex to Sanford | 28 miles |
| Sanford to Southern Pines | 25 miles |
| Southern Pines to Aberdeen | 4 miles |
| Aberdeen to Hamlet | 25 miles |
| Total distance—Raleigh to Hamlet | 97 miles. |

Q. Let me interrupt there Mr. Arnold to ask whether this route is in operation?

A. No, sir.

Q. For the reasons you have heretofore stated?

A. That is right.

Q. Proceed.

A. Through package cars are operated to Raleigh from Richmond and Portsmouth, Va., Atlanta, Ga., Greenwood, S. C., and, as previously mentioned, from a large number of the large northern, eastern, and western cities. All of these cars contain freight for distribution in the territory between Raleigh and Hamlet. Local package cars are now loaded from Raleigh to Apex, Sanford and Aberdeen, and from Hamlet to Aberdeen and Sanford, and from Sanford to Raleigh, Hamlet and Pittsboro.

There are no local freights operating through between Raleigh and Hamlet. Due to the industrial switching work in this territory, it is not possible to operate through locals because of the hours of service required, and the territory [fol. 1767] is worked by local switchers operating between Hamlet and Southern Pines, between Pittsboro and Sanford and between Raleigh and Pittsboro, but there is no connection between the switchers, and through movement from one switcher's territory to another cannot be had without delay to the freight.

This truck service was designed to provide through movement from Hamlet and Raleigh to all intermediate stations and eliminate local package and peddler cars, and to save time on the local switchers peddling l.c.l. freight. It would also make it possible frequently to eliminate through package cars now operated from Portsmouth and Richmond to Sanford and Aberdeen by consolidation with cars forwarded from Portsmouth and Richmond to Raleigh and Hamlet. However, with the key station restrictions designated on this route, the distribution of this through package car freight is absolutely stopped. Through shipments accumulated at Hamlet from through package cars which have moved long distances, up to 965 miles in the case of the Chicago-Hamlet package car, as well as shipments moving in package cars from Charlotte to Hamlet, could not be moved by truck from Hamlet, any farther than Hoffman, the first station south of Aberdeen, a distance of only 14 miles. It would be possible to handle from Raleigh through shipments accumulated at that point only to Cary, a dis-

tance of 9 miles, which is the only station between Raleigh and Apex, a total distance of 15 miles.

[fol. 1768] These two examples, which could be duplicated for each of the key stations designated on this route, illustrate the utter impracticability of operating our trucks under the existing restrictions.

The loading of package cars from Raleigh or Hamlet would still not overcome the difficulty because from Aberdeen distribution could be made only to Hoffman and Marston, from Southern Pines only to Vass, Cameron, and Lemon Springs, from Sanford only to Lemon Springs, Cameron and Vass to the south and Colon, Moncure, Pittsboro and New Hill to the north, and from Apex only to New Hill, Pittsboro, Moncure and Colon to the south and Cary to the north. Likewise, through package car lading received by Sanford and Aberdeen from Portsmouth and Richmond could be distributed by truck to only a few stations.

As to schedule movement, as an example, a shipment arriving at Hamlet in a through package car from Chicago, a distance of 965 miles, if destined to Aberdeen, twenty-five miles from Hamlet, could not be moved from Hamlet to Aberdeen by trucks; nor could a shipment from Chicago destined to Southern Pines or any station north thereof be handled from Hamlet by truck, forcing the continuation of peddler or local package cars. The effect on the time of delivery of the shipment to Aberdeen would be, if handled by truck from Hamlet, leave Hamlet at 3:35 A. M., [fol. 1769] arrive Aberdeen 11:30 A. M., to 12:30 P. M. A shipment from Hamlet to Southern Pines, if handled by truck, would arrive Southern Pines 4:45 A. M.; if by train, at 12:30 to 4:30 P. M., destined to Sanford, would arrive at Sanford by truck at 6:35 A. M. If a local package car were loaded at Hamlet for Sanford it would leave Hamlet by train at 5:40 A. M. and arrive at Sanford 9:25 A. M. If this car were operated it would contain freight destined to stations contiguous to Sanford served by the Pittsboro-Sanford switcher, such as Pittsboro, Moncure and Colon, and a shipment destined to Pittsboro would be moved from Sanford by this switcher at 3:30 to 5:00 P. M., arriving at Pittsboro at 6:00 to 8:00 P. M., whereas, if handled by truck from Hamlet, it would arrive Pittsboro at 7:15 A. M.,——

Q. You mean the previous morning?

A. No. The same morning arrive at 7:15, as compared with 8:00.

Q. I am trying to show the morning of the same day.

A. That is right, the same day in other words, it would be delivered in the morning by the truck and not after *not after* closing hours by the train.

Q. Proceed.

A. —effecting a twenty-four hour earlier delivery. These examples could be multiplied by the number of key stations shown on this route between Raleigh and Hamlet.

[fol. 1770] Outbound from this territory the truck could not handle shipments through to either Raleigh or Hamlet, but would be compelled to unload at each key station, forcing the continuance of local package or peddler cars and the consequent delay to the freight.

Q. When you stated, Mr. Arnold, that the truck could not handle shipments outbound from this territory through to either Raleigh or Hamlet, you are excepting, I presume, those stations intermediate between the terminal points and the nearest key station, are you not, for example. Will the truck Company pick up a shipment at Cary and carry it to Raleigh or could it pick it up at Hoffman or Marston and carry it through to Hamlet.

A. That is correct, but the truck could not pick up a shipment say at Cameron or Moncure and carry it to either Raleigh or Hamlet.

Q. In other words, on the outbound movement the key stations restrictions as now imposed would prevent the handling of outbound movements by truck from by far the larger proportion of the stations on this route.

A. That is all the way through from Raleigh to Hamlet. That would make it necessary to provide some means by cars to get the outbound shipment from these key stations into Raleigh or Hamlet for transfer to other package cars at those points.

[fol. 1771] Q. One of the primary purposes to be accomplished by this service I take it is the elimination of peddler cars or peddler movement by local train.

A. That is correct.

Q. You stated, Mr. Arnold, that local package cars are now loaded from Raleigh to Apex, Sanford and Aberdeen, from Hamlet to Aberdeen and Sanford, and from Sanford

to Raleigh, Hamlet and Pittsboro, all points on the Hamlet-Raleigh route. Bearing in mind that the restrictions imposed upon these truck operations are based upon the theory that when through package cars are operated between two points there is no need for truck service, will you explain why the use of the package cars mentioned to the exclusion of the trucks will not or cannot provide satisfactory transportation service on this route?

A. First, let me say that my conception of through package cars are those cars which are operated between territories of production and large centers of distribution or to transfer points where l. c. l. traffic is available in sufficient volume to permit the consolidation of numbers of shipments into carloads for movement overhead in through trains, such as the cars I have mentioned moving from Chicago and other large centers to Hamlet Transfer, or from Richmond and Portsmouth to Raleigh.

I do not think that it is proper to regard a car loaded [fol. 1772] at Hamlet Transfer and moved to Aberdeen on a local switcher, a distance of only twenty-four miles, as a through package car. I have already explained how and why these local package cars are moved to several points between Raleigh and Hamlet, namely to place the l. c. l. freight at points convenient for distribution to destination by the local switchers. They are therefore in reality local peddler cars rather than through package cars, and as such can and will be largely dispensed with through the operation of the truck service.

Q. What package cars would be operated notwithstanding the truck service?

A. We would continue, however, to operate through package cars from Hamlet to Raleigh, from Raleigh to Hamlet, and, of course, continue the through package cars into Hamlet from distant points and into Raleigh from Portsmouth and Richmond, possibly combining the through package cars now operated from Portsmouth and Richmond to Sanford and Aberdeen with the cars operated from Portsmouth and Richmond to Hamlet and Raleigh.

Q. Since we will continue to operate the through package car between Raleigh and Hamlet in both directions can we use these cars for handling shipments moving between those two points to the exclusion of the trucks?

A. Yes, we would not object to a restriction which would [fol. 1773] prohibit the use of our trucks for handling traffic from Hamlet or points south thereof to Raleigh or points north thereof, or from Raleigh or points north thereof to Hamlet or points south thereof.

Q. From your last statement, Mr. Arnold, I understand that you are referring to less than carload shipments which are moving either all the way from Hamlet to Raleigh or beyond, or in the reverse directions from Raleigh to Hamlet, or over that route in overhead movement from points beyond either Hamlet or Raleigh.

A. That is correct.

Q. But you do not mean to state that a restriction which would prohibit us from handling by truck less than carload shipments moving from Hamlet to a point south of Raleigh or from Raleigh to a point north of Hamlet would be excepted.

A. That should not be restricted.

Exam. Livingstone: We will take a short recess at this time.

(A short recess was taken.)

Exam. Livingstone: Proceed.

Q. Will you now discuss the route between Hamlet, N. C., and Columbia, S. C., Docket MC 86687, Sub 3.

A. It is necessary for me to combine for discussion Sub 3, Hamlet to Columbia, and Sub 1, McBee-Sumter, as the key [fol. 1774] station restrictions on the Hamlet-Columbia route affect the movement of traffic to and from the McBee-Sumter route. These two routes are now in operation. There are no key station restrictions on the McBee-Sumter route.

The key stations designated on the Hamlet-Columbia route are Hamlet, Cheraw, McBee and Columbia.

Regular through package cars are operated only from Hamlet to Columbia, Hamlet to Hartsville and Columbia to Hamlet and Hartsville to Hamlet.

By Mr. Abeles:

Q. Mr. Arnold, are there any key station restrictions on the McBee-Sumter route?

A. I stated there were no restrictions but as a matter of fact McBee has been named as a key station and it is the junction point with the McBee-Sumter route.

Q. However there are no other key stations named on the McBee-Sumter route?

A. That is correct.

Q. The mere naming of a single key station on that route would not in any way restrict the full use of the trucks on that route would it?

A. It would restrict the purpose for which this route was designed as I will explain a little later.

Q. Considering the McBee-Sumter route by itself, there are no restrictions on the full use of the truck to and from and between points on that route?

[fol. 1775] A. That is correct.

Q. Proceed please.

A. No cars are loaded at either Cheraw or McBee for any other point or from Columbia to McBee, Cheraw, or any other point on these routes, except to Hamlet. Hamlet also loads a local package car to Cheraw.

As I have previously stated, Hamlet is the principal transfer point for l. c. l. freight on the Seaboard and receives a large number of package cars from northern, eastern, and western centers of distribution, also that package cars are operated from Charlotte to Hamlet, leaving Charlotte at 10:30 P. M., arriving Hamlet at 2:40 A. M., and these routes were designed to coordinate with these package cars from Charlotte, leaving Hamlet at 4:30 A. M., and these routes were designed to coordinate with these package cars from Charlotte, leaving Hamlet at 4:30 A. M., and handling this traffic through to Columbia, Hartsville and other points on these routes for early morning deliveries.

Q. When you refer to these schedules, you are talking about the schedules from Hamlet are you not?

A. I spoke of the package car schedule from Hamlet to Hamlet.

Q. I understand the schedules from Hamlet to which you have just referred are the truck schedules.

[fol. 1776] A. Leaving at 4:30 A. M., is the truck schedule, that is correct. The key station restrictions would immediately block the handling of these shipments by truck from Hamlet to Cheraw or any point south of Cheraw, thus requiring them to be held at Hamlet for handling on the

train leaving Hamlet at 10:45 P. M. the following evening, thus delaying their delivery twenty-four hours.

While Hamlet loads through package cars to Columbia and Hartsville and a local package car to Cheraw, these cars are loaded with traffic arriving at Hamlet at different hours during the day in time to leave on the train at 10:45 P. M. and reach Columbia and Hartsville at 7:00 A. M., and 10:45 A. M., respectively, and the car for Cheraw moves on local switcher in time to reach Cheraw at 10:00 A. M. However, all freight from Hamlet and all other points on these routes is handled by the truck making unnecessary the operation of peddler cars or other set-out cars.

Q. You mean by that, Mr. Arnold, freight other than that which is handled on the package cars which you have just mentioned do you not?

A. I don't know as I understand what you mean, but this——

Q. Mr. Abeles: Strike that question. I don't think that is necessary.

The witness: I mean from Hamlet and all other points.

By Mr. Abeles:

Q. You stated, I believe that a package car was operated [fol. 1777] from Hamlet to Cheraw. Why could not the shipments for points south of Cheraw from Hamlet be loaded in this car for distribution from Cheraw by truck?

A. First, because we would be stopped again by the designation of McBee as a key station. Second, this package car is pulled from the warehouse during the evening prior to the arrival of the package cars from Charlotte and could not, therefore, handle those shipments, and, third, this car does not arrive at Cheraw until 10:00 A. M., whereas the truck passes there at 5:20 A. M. Obviously, to prohibit the handling by truck between Hamlet and Cheraw would delay these shipments twenty-four hours.

Q. Why could not the train that handles the package cars to Columbia and Hamlet handle all of the traffic out of Hamlet for points on these routes?

A. This train leaves Hamlet at 10:45 P. M. As I have previously stated, the package cars from Charlotte do not arrive until 2:40 A. M., missing this connection. Further, this train does not handle a peddler car, which would be necessary if the truck is not permitted to handle all of the

local traffic from Hamlet as well as the shipments in the Charlotte-Hamlet package car, to all points on the route, including Columbia, Cheraw and Hartsville.

No regular package cars are loaded from Columbia to any points on these routes, except to Hamlet. The train on which this package car moves leaves Columbia at 3:40 [fol. 1778] P. M., which is too early to receive all the day's loading. The truck leaves Columbia at 7:00 P. M. and handles the business for Hamlet and beyond which has been received too late to move in the package car leaving at 3:40 P. M., and if the use of the truck for these shipments is prohibited they would remain at Columbia until the following afternoon, delaying the movement twenty-four hours. On business from Columbia and other stations on these routes the restrictions would prevent handling by truck to McBee or beyond, which would make it necessary to put on peddler cars that are now operated.

Q. Unless the restrictions resulting from the key stations designated on these routes are removed, will additional peddler cars be required?

A. A peddler car would be required each way between Hamlet and Columbia, and one between McBee and Timmonsville and return.

Q. I understand from what you have said, Mr. Arnold, that in order to accomplish the purposes and benefits of our truck operations along these routes, it will be necessary to eliminate the restrictions entirely?

A. Yes.

Q. Will you now discuss the route between Hamlet, N. C., and Wilmington, N. C., Docket MC 86687, Sub 5.

A. This route is not in operation.

[fol. 1779] Hamlet, Laurinburg, Maxton, Pembroke, Lumberton, Bladenboro, and Wilmington have been designated key stations on this route. The distances between these stations are as follows:

Hamlet to Laurinburg	16 miles
Laurinburg to Maxton	7 miles
Maxton to Pembroke	10 miles
Pembroke to Lumberton	11 miles
Lumberton to Bladenboro	14 miles
Bladenboro to Wilmington	53 miles
Hamlet to Wilmington	111 miles

Mr. Beall: Will you permit a question here for the purpose of clarification?

Mr. Abeles: Surely.

Mr. Beall: In the map which was filed with the Seaboard's petition the legend states that certain numbers represent the number of intermediate stations as between key stations and for illustration you showed twenty-two as being the number of intermediate stations between Henderson and Petersburg whereas the map that has been offered here as exhibit number one shows only about twelve. I notice similar discrepancies throughout the testimony here. Can you enlighten us with respect to that?

Mr. Abeles: Well on this map, the map attached to the petition, includes all tariff points, a number of those are not [fol. 1780] agency points. Several of them are non-agency stations or blind-sidings or what not, whereas this map, the map offered in exhibit here this morning included only agency stations.

Mr. Beall: That clears up any trouble in following your testimony.

Mr. Abeles: Let me ask one more question in that connection, Mr. Arnold, does the truck serve the non-agency stations which are included in the numerical designation on the map attached to the petition, but which are not shown on map exhibit one.

The Witness: There would be occasional cases where some non-agency point there had been some l. c. l. traffic but that is handled by what we call a governing agency which is often the nearest agency station on either side of the non agency point.

Mr. Abeles: To all practical purposes only the agency stations as shown on map exhibit one are served by the truck operation, those would be the only ones of any moment. Some of the points on here might be points at which no l. c. l. freight is delivered. Does that clear up the discrepancy?

Mr. Beal: That clears up the discrepancy, yes, sir. Thank you.

The witness: This is one of the routes out of Hamlet which I have previously explained was designed to coordinate with the through package cars moving out of Charlotte at 10:30 P. M., arriving Hamlet at 2:40 A. M. The truck from Hamlet to Wilmington is scheduled to leave

Hamlet at 4:00 A. M., and arrive Wilmington 9:00 to afford early morning delivery to all points between Hamlet and Wilmington.

Through package cars are operated to stations on this route only from Hamlet to Wilmington and Wilmington to Hamlet. Local package cars are operated from Hamlet to Laurinburg, Lumberton, and Bladenboro, but none from these points. There are no local package cars operated from Wilmington daily.

Mr. Smiley: We want to object to any further testimony concerning routes which this carrier has not operated, evidently this carrier has made no effort to furnish the public with the service which we presume they proved was necessary to the public convenience and necessity, almost two years ago. Now the proposition here is purely hypothetical. They have no actual experience to go on. They don't know whether this route will work with key points or not. If it is a proposition here of showing that the public convenience and necessity can only be served if the premises of their original cars were changed, then I think we ought to get that in issue right now so that we will know whether our actions have to do with new public convenience and necessity or merely carrier necessity before [fol. 1782] they even attempt serving the public.

Exam. Livingstone: Your position is noted on the record. The objection is overruled.

Mr. Smiley: Exceptions please.

Mr. Abeles: One moment——

Mr. Inglis: I might say that I take the same position and I took it in my petition for modification.

Mr. Abeles: Proceed.

The Witness: Except very occasionally when required for an exceptionally heavy movement, no set-out or package cars are operated to our—from Maxton or Pembroke, and these points should be eliminated as key stations for that reason alone.

I will state here again that Hamlet is the principal transfer point for l.c.l. freight on the Seaboard to which, as I have previously explained, through package cars are loaded from numerous on-line and off-line points. Some of these through package cars contain freight for stations from Hamlet to and including Wilmington, but under the restrictions imposed, this freight, particularly that received from

the Charlotte package cars with which the truck service on this route was designed to coordinate, could not be moved by truck from Hamlet any farther than Elmore, 12½ miles from Hamlet, and the distribution of all of this through package car freight from Hamlet to points on this [fol. 1782] route is absolutely stopped. There would be no advantage in loading the freight at Hamlet in cars and moving to Laurinburg for distribution thence by truck, as the very next station, Maxton, only seven miles from Laurinburg, is likewise named a key station and then freight could not, therefore, move by truck from Laurinburg. There would be no advantage in loading in cars and moving to Pembroke for distribution thence by truck, for we would again be stopped by the key station at Lumberton, eleven miles from Pembroke.

So far as Laurinburg, Lumberton, Bladenboro, and Wilmington are concerned, satisfactory delivery can be made of freight which accumulates at Hamlet during the day by forwarding these shipments from Hamlet in Train 78 leaving Hamlet at 11:15 P. M., arriving at Laurinburg 12:15 A. M., Lumberton 1:30 A. M., Bladenboro 2:15 A. M., and Wilmington at 6:30 A. M., and local package cars may be continued in operation from Hamlet to Laurinburg, Lumberton, and Bladenboro and through package cars from Hamlet to Wilmington after inauguration of truck service on days when there is sufficient accumulation of such tonnage to justify the operation of such cars.

Q. Then why could not the train that would handle these cars handle all of the traffic out of Hamlet for all points on this route?

A. This train is scheduled to leave Hamlet at 11:15 P. M. [fol. 1784] As I previously stated, the package cars from Charlotte do not arrive until 2:40 A. M., missing this connection. Further, this train does not handle a peddler car, is on a through schedule, does not perform local service and stops at only the setout points. The distribution of freight to stations intermediate between these points is performed by local freight train, which arrangement it would be necessary to continue if the truck operation is not permitted without existing restrictions. The local train leaving Hamlet at approximately 7:00 to 9:00 A. M., and working to Lumberton, 44 miles from Hamlet, now does all of the switching and peddling of l.c.l. freight between

Hamlet and Lumberton and arrives Lumberton from 1:00 to 4:00 P. M. The truck leaving Hamlet at 4:00 A. M. and arriving Lumberton 5:55 A. M. would, therefore, advance the delivery of the freight to all local points between Hamlet and Lumberton, as compared to the deliveries now made by this local freight. From Lumberton to Wilmington the local switching and peddling of l.c.l. freight is performed by local freight leaving Lumberton at noon or later, arriving Wilmington 5:00 P. M. or later. This train now distributes the l.c.l. freight for all local points from the local package cars moving from Hamlet and set out at Lumberton and Bladenboro, effecting late afternoon deliveries, whereas the truck passing Lumberton at 5:50 A. M. and arriving Wilmington 9:00 A. M. would provide early [fol. 1785] morning delivery to all points, and dispense with the peddler cars now used.

Q. May I interrupt a minute. Taking it from what you have just said I take it the uses of the truck service on the eastbound movement on this route would accomplish two main purposes, namely, it would handle the business received at Hamlet in the package car from Charlotte which could not be handled, which doesn't get to Hamlet in time for the train now operating on this route. It would advance all local shipments to points on this route by twenty-four hours, is that correct, summarizing what you have just said.

A. Well I don't — that is entirely correct. It would not advance the delivery twenty-four hours to all points on the route.

Q. All points except those to which package cars are now operated?

A. No. It would effect between Lumberton and Wilmington very early in the morning as against very late evening delivery which is in effect twenty-four hours earlier delivery from Lumberton to Wilmington.

Q. Perhaps we had better clear that up. When a shipment is delivered in the early morning as against late afternoon. You have been referring I understand to that as twenty-four hour advance.

A. In the delivery of the freight to the customers.

[fol. 1786] Q. Perhaps you had better explain that now at this point, why do you say it is a twenty-four hour.

A. The explanation of that is this. If a shipment would arrive at a station say from 8:00 to 10:00 A. M. I would

say that was an early morning delivery. If it arrived from 5:00, 6:00 or 7:00 P. M., that is usually after business hours and it either isn't delivered or it is delivered to the man too late for the days business and makes as far as he is concerned a twenty-four hour later delivery.

Q. In other words, if it isn't delivered to him until late afternoon it might as well be delivered to him the following morning.

A. The next morning, that is right.

By Mr. Abeles:

Q. Will you now discuss the movement from Wilmington to Hamlet?

A. (The witness:) Let me say before we go into that, you are talking about twenty-four hour earlier delivery. We must not overlook the Charlotte package car arriving at Hamlet 2:40 A. M. after this train is gone.

Q. I think I mentioned that in my question, now will you discuss the movement from Wilmington to Hamlet.

A. The package car loaded at Wilmington for Hamlet is moved from Wilmington on train 77, scheduled out of Wilmington at 6:00 P. M. This train has very important connections at Hamlet for carload traffic northbound on [fol. 1787] trains 88 and 80 leaving Hamlet in the early morning, and in order to make these connections must arrive Hamlet not later than 3:30 A. M. It is frequently the case that this train leaves Wilmington before the package car is ready and under those conditions this car is handled on train 79 scheduled to leave Wilmington 12:30 A. M. and arrive Hamlet at 5:00 A. M. The departure of this train No. 79 from Wilmington, however, is actually anywhere from midnight to 4:00 A. M., depending upon receipt of oil shipments at Wilmington, and arrives at Hamlet usually 7:00 to 9:00 A. M. It is important that the oil shipments from Wilmington on No. 79 make connection with trains leaving Hamlet in the morning, including the switchers to the contiguous territories. Trains 77 and 79 are through trains and do not peddle l.c.l. freight, and no local trains operate westbound from Wilmington to Hamlet. The truck scheduled to leave Wilmington at 5:30 P. M., arriving Hamlet 10:30 P. M., would do all of the local picking up from Wilmington to Hamlet, now performed only by the eastbound locals, thus materially advancing this freight.

Q. You say that all of the local pick-up from Wilmington to Hamlet is now performed only by the eastbound locals? That applies does it not to shipments originating at points on this route and moving westbound to Hamlet as well as to shipments moving eastbound to Wilmington does it not?

[fol. 1788] A. That is correct.

Q. How are those westbound shipments handled after they are picked up by the local and delivered, I presume, at Wilmington.

A. A local carries the car to Wilmington. That same crew comes back on number 79.

Q. Which you have stated is not a peddler train?

A. Not a peddler train, but he brings that car to Hamlet and it is backhauled again from Hamlet on the locals.

Q. In other words, if a shipment originates for example —I was speaking of the intermediate stations.

A. Yes, if it is going beyond Hamlet, of course it goes beyond Hamlet, it is not backhauled anymore.

Q. A shipment originating for example Clarkton consigned to Elmore in picked up by the eastbound local, carried to Wilmington, then carried back to Hamlet on train 79?

A. Yes.

Q. Then again backhauled to destination, is that correct?

A. On the local out of Hamlet that morning.

Q. Whereas if the truck was in operation it could be carried directly from Clarkton to destination.

A. That is right.

Mr. Crimm: May I ask you solely an intra-state shipment from Clarkton to Elmore?

Mr. Abeles: That particular movement would be.

[fol. 1789] Mr. Crimm: Which would have no application in this proceeding.

Mr. Abeles: That is correct.

Q. I understand from what you have said that in order to accomplish the purpose and benefits of our truck operation along this route it will be necessary to eliminate the restrictions entire ?

A. Yes, unless it be a restriction only prohibiting the movement by truck from Wilmington to Hamlet and points beyond Hamlet, or from Hamlet to Wilmington, of l.c.l. freight accumulated at Hamlet during the day prior to the departure of train 78.

Q. Why do you not include such freight, i.e., freight accumulated at Hamlet during the day, consigned to Laurinburg, Lumberton, and Bladenboro?

A. Because the use of the truck in handling this movement will frequently enable us to dispense with the local package cars now operated from Hamlet to those points. In fact, we expect to eliminate the Bladenboro car entirely, and also the peddler cars on the locals.

Q. In other words, Mr. Arnold, as I understand the mere fact of the operation of what you have called local package cars does not mean that if we are permitted to use our trucks in the way in which we regard as efficient and effective, we would not be able to eliminate many of these local [fol. 1790] package cars, is that correct?

A. In a number of instances not entirely, yes in a number of instances.

Q. Please now take up your discussion of the route between Monroe, N. C., and Waxhaw, N. C., Docket MC 86687 Sub. 15.

A. While no key stations on the Monroe-Waxhaw route have been named, other than Monroe, this is operated as a twelve mile extension of the route between Hamlet and Monroe, MC 86687, Sub Nos. 20 and 28. A hearing on the latter route was held on March 31, 1941, and a brief was filed in that proceeding on April 28, 1941. If Hamlet and Monroe are designated as key stations the resulting restriction on the Hamlet-Monroe route would prohibit the handling by truck of traffic from Hamlet through Monroe to Waxhaw, resulting in requiring this traffic to be loaded in package cars from Hamlet to Monroe and there transferred to the truck for handling to Waxhaw. The additional handling at Monroe would therefore be all that would be accomplished.

To require the use of the package car operated from Monroe to Hamlet for the handling of traffic moving eastbound from Waxhaw to Hamlet would seriously disrupt the existing service. Practically none of this traffic is consigned to Hamlet as the destination point, most of it moving either to northern points or to points south of Hamlet. [fol. 1791] The truck is scheduled to make connections at Hamlet with through north or southbound trains. The package car from Monroe to Hamlet, however, does not arrive at Hamlet in time to make these connections, and

consequently if these shipments could not be handled by truck from Waxhaw to Hamlet, a 24 hour delay would result.

Q. I take it from what you have said Mr. Arnold the truck between Hamlet and Monroe is now operating.

A. It is in operation between Hamlet and Waxhaw.

Q. Will you now discuss the route between Monroe, N. C., and Rutherfordton, North Carolina, Docket MC 86687, Sub 6.

A. Monroe, Charlotte, Lincolnton, Shelby, and Ellenboro have been designated as key stations on this route. The distance between these points is as follows:

Monroe to Charlotte	22 miles
Charlotte to Lincolnton	34 miles
Lincolnton to Ellenboro	36 miles
Ellenboro to Rutherfordton	13 miles
Total distance—Monroe to Rutherfordton	105 miles

Q. I think inadvertently you have left out Shelby in that enumeration. Do you happen to know the distance between Lincolnton and Shelby?

A. That can be supplied but Shelby is between Lincolnton and Ellenboro.

[fol. 1792] Q. About half way.

A. Approximately so.

Q. Proceed.

A. Package cars are operated on this route from Monroe to Charlotte, and from Charlotte to Monroe. Local package cars are operated from Charlotte to Lincolnton and Shelby containing freight for distribution from those points to the adjacent stations by local switchers. There are no through connecting local train schedules on this route, which is a situation similar to that which I described on the Raleigh-Hamlet route. These local package cars are tantamount to peddler cars, and will be largely eliminated when the truck service is operated.

No package cars are loaded at Lincolnton, Shelby or Ellenboro for any points on these routes. The restriction of the use of the truck for traffic originating at Lincolnton, Shelby or Ellenboro would therefore compel the continu-

ance of the use of peddler cars for the handling of l. c. l. business.

Q. You stated that we operated a package car from Monroe to Charlotte. To what extent would the operation of this package car dispense with the use of the truck from Monroe to Charlotte?

A. This service is designed so that freight from interstate points east of Monroe will be loaded to Monroe and [fol. 1793] arrive there at the latest on train No. 95 at 2:30 A. M., to be distributed from there to all points on this route by truck for early morning delivery. The package car from Monroe to Charlotte is a combination with the car arriving at Monroe at 8:45 A. M. from west of Monroe on the Georgia Division, including Atlanta, into which the Monroe freight for Charlotte is also loaded. This car does not leave Monroe until around 10:00 to 11:00 A. M., and arrives Charlotte 11:00 A. M. to 12:00 Noon, whereas the truck will be scheduled to leave Monroe at 3:00 A. M., and if the freight were loaded in this package car, it would be delayed at Charlotte twenty-four hours.

Q. You stated that we operated a package car from Charlotte to Monroe. To what extent will the operation of this package car enable us to dispense with the use of the truck from Charlotte to Monroe?

A. The truck service on this route was planned to transfer from the truck to package cars at Monroe all interstate traffic originating on this route consigned to interstate destinations beyond Monroe. The package cars loaded at Charlotte are closed at 6:00 P. M. The truck will arrive at Charlotte at 8:15 P. M., after the package car has been loaded and sealed and transferred to the yard. Consequently, to transfer this interstate freight from the truck to the package cars at Charlotte would require an entirely [fol. 1794] new operating set-up both with respect to the warehouse and yard at that point, or to compel it to lay over at Charlotte for twenty-four hours, whereas we already have the necessary operating arrangement effective at Monroe to make this transfer, and this point is only twenty-two miles from Charlotte. Hence to avoid a disruption of the operating arrangement effective at Monroe to make this transfer, and this point is only twentytwo miles from Charlotte. Hence to avoid a disruption of the operating arrangements at Charlotte or a twenty-four hour delay in

the handling of this business these shipments must be carried through Charlotte to Monroe by truck. On interstate business originating at Charlotte which has come into Charlotte in package cars or received from connections the package car now moving from Charlotte to Monroe and Hamlet will be used. Traffic originating at Monroe for interstate destinations west of Charlotte could be handled to Charlotte as effectively by the Monroe to Charlotte package car as by truck. Interstate shipments coming into Charlotte in the through package cars which are operated to Charlotte from Chicago, Cincinnati and other western points, and in through package cars from Richmond and Portsmouth destined to stations on this route between Charlotte and Rutherfordton, which latter will be loaded to Monroe with inauguration of the truck service, would be [fol. 1795] stopped as to distribution by truck from Charlotte or Monroe with the presently designated key station restrictions, because with Charlotte designated as a key station, we would be able to handle from Monroe by truck only as far as Matthews, 13 miles, and with Lincolnton designated as a key station, we would be able to handle by truck from Charlotte only as far as Stanley, eighteen miles from Charlotte, and there the use of the truck would be stopped and the continuance of set-out and peddler cars for this distribution service would be compelled.

Q. What, if any, restrictions on the use of trucks over this route would not materially impair the effectiveness of the coordinated service?

A. We would not object to a restriction prohibiting the use of the truck for handling shipments (1) from Charlotte to Monroe and points beyond not originating at points between Charlotte and Rutherfordton, or (2) from Monroe to Charlotte except freight destined to points on this route between Charlotte and Rutherfordton.

Q. Would there be any saving in peddler or local package cars accomplished by truck operation between Monroe and Rutherfordton?

A. Yes. We would save the local package cars to Lincolnton and Shelby or an equivalent number of peddler cars on the switchers.

[fol. 1796] Q. Now proceed with the discussion of the route between Gaston, South Carolina and Garnett, South Carolina, Docket MC 86687.

A. This route is in operation. The restriction placed upon the operation of this route prohibits the use of the truck directionally, that is, on the southbound movement, no traffic may be handled by truck from Gaston to Swansea, North, Denmark, Fairfax or Garnett, and northbound, no traffic may be handled by truck from Garnett to Estill, Fairfax, Denmark and Gaston.

No package cars are operated from any point on this route to any other point on the route. There is a package car loaded at Hamlet, N. C., to North, S. C., containing freight for distribution to all stations on this route, Gaston to Garnett, inclusive. There is a car loaded at Columbia, S. C., which sets out at North, containing freight for distribution to all points on this route. There is a car loaded at Savannah, Ga.; containing freight for distribution to all points on this route. The truck distributes the freight from cars set out at North to all points, including Gaston and Garnett. At the present, car loaded at Savannah does not make connection with the truck at Estill and this freight is put off at destinations on the route by train 76, which handles this car from Savannah. The truck does all of the picking up at all points on the route, the north-bound [fol. 1797] freight being loaded on train 76 at North and the southbound freight on train 75 at Estill.

Q. You mean the truck picks up the traffic on route, takes it to North and Estill where it is picked up by the local freights respectively in each direction.

A. That is right.

Q. Proceed.

A. Since the restriction operates only to prohibit the movement by truck of shipments from Garnett and Gaston, the handling of inbound movements is not prejudiced. However, shipments originating at Garnett or Gaston are affected. For example, on August 6, 1941, a shipment was made from Gaston to Williamsburg, Pa. It moved by truck from Gaston to North and was there loaded on a car for movement north. The existing restrictions on this route, however, would prohibit the handling of l. c. l. movements from Gaston to North, and consequently the northbound train would have had to stop at Gaston and pick up this shipment. In other words, the only effect of the key station restrictions on this route is to compel the trains to make additional stops at Gaston and Garnett to pick up shipments

consigned from these two points to interstate destinations, and it seems reasonable to ask for removal of the restrictions.

Q. You have stated, Mr. Arnold, that the particular shipment that you used for illustrative purposes was actually [fol. 1798] moved from Gaston to North, by truck. It is your understanding is it not that the key stations restrictions are not yet effective that the order imposing them has been suspended?

A. That is correct.

Q. That we could consequently handle that particular shipment in this way?

A. That is true.

Q. Without violating any conditions?

A. Yes, sir.

Q. Now proceed with the discussion of the route between Greenwood, South Carolina, and Great Falls, South Carolina, Docket MC 86687 Sub 8.

A. This route is now in operation. The key stations named on this route are Greenwood and Clinton.

No package cars are operated to or from Clinton. No package cars are operated from Greenwood to any point on this route, and there are no package cars operated to or from any other points on this route, except Chester, which receives package cars from Portsmouth, Va.

Clinton is not a transfer point. Greenwood is a transfer point and receives package cars from distant cities for distribution to stations on this route. Considerable l. c. l. freight is also received from Connections at Greenwood destined to points on this route.

This route does not connect with any other truck route, [fol. 1799] and the only effect of the restriction is to prevent the handling of shipments from Greenwood to Clinton and Clinton to Greenwood by truck. Clinton is only twenty-five miles from Greenwood, so that shipments from Greenwood to Chester, Great Falls or other stations north of Clinton could be handled from Greenwood by truck only to Cross Hill, a distance of only 14 miles.

If the restrictions resulting from the presently designated key stations on this route are to be retained the distribution of freight to local points on this route could only be performed in the following manner:

There is no local northbound train operating from Greenwood, and consequently l. c. l. shipments accumulated at Greenwood from interstate origins destined to stations intermediate between Greenwood and Chester, except Clinton, would have to be carried by car to Chester and from there peddled by the local train operating southbound. This train does not pass Chester until 5:00 P. M., or later, and the delivery of this freight would thus be delayed twenty-four hours as compared with the present service by truck.

Clinton is of much importance that this twenty-four hour delay would have to be eliminated by the operation of another car to Clinton from Greenwood.

The traffic for Great Falls would have to be loaded in a package car now operating from Greenwood to Monroe and Back-hauled to Catawba, the junction point on the main line with the Great Falls Branch, on the local leaving Monroe [fol. 1800] at 10:30 A. M. and connecting with the branch line train to Great Falls, leaving Catawba at 3:00 P. M. or later, arriving Great Falls 4:30 P. M. or later. This traffic would also thus be delayed twenty-four hours.

Q. Will you now state, Mr. Arnold, what additional cars will have to be operated if the key station restrictions now imposed upon this truck service are not removed?

A. As I have just said, it would be necessary to operate two additional cars, one to Clinton and one to Chester.

Q. Do you think that the removal of the restrictions upon the operation of this truck is necessary?

A. Yes, it is absolutely necessary if the benefits of the coordinated service are to be realized.

Q. Now proceed with the discussion of the route between Jacksonville, Fla., and Fernandina, Fla., Docket MC 86687 Sub 18.

A. This route is in operation. No key station restrictions have been imposed upon it.

This truck delivers l. c. l. freight from Jacksonville to Yulee and Fernandina. Yulee is twenty-two miles north of Jacksonville and Fernandina is twelve miles east of Yulee, the total distance from Jacksonville to Fernandina being thirty-four miles.

Jacksonville is a large transfer point for l. c. l. freight received in package cars from northern, eastern, and western points and from coastwise steamer lines. These cars [fol. 1801] and steamers arrive at Jacksonville at different

times during the day and freight is transferred at that point for forwarding in package cars and trucks.

The truck for Fernandina leaves Jacksonville at 6:30 A. M. passes Yulee at 7:30 A. M., and arrives Fernandina at 8:00 A. M., affording early morning delivery of all of this l. c. l. freight. There are no package cars loaded from Jacksonville to Fernandina, or vice versa, and no peddler cars operated between these points. There is, therefore, no conceivable reason for the imposition of any restrictions upon the full use of the truck on this route.

Q. Now proceed with the discussion of the route between Jacksonville, Fla., and Live Oak Fla., and between Live Oak, Fla., and River Junction, Fla., Docket MC 86687, Subs 9 and 10, explaining why you are dealing with these two routes together.

A. These two sub numbers cover one coordination through route between Jacksonville and River Junction.

The key stations named on this route are Monticello, Tallahassee, Quincy and River Junction. Incidentally, the name of River Junction, effective August 15, 1941, was changed to Chattahoochee by legislative action, but to avoid confusion I shall continue to refer to it as River Junction.

With reference to the key stations named there are no [fol. 1802] package cars operated to or from Monticello, which fact should eliminate that point as a key station.

As already stated, Jacksonville is one of our largest transfer points, receiving package cars from the large northern, eastern and western cities and from coastwise steamer lines serving that port. Package cars are loaded daily by Jacksonville for Lake City, Live Oak, Madison, Tallahassee, Quincy and River Junction. These cars however, contain no freight for intermediate points. The l. c. l. freight from Jacksonville destined to intermediate points is handled by the truck from Jacksonville.

Q. These routes are now in operation by truck are they Mr. Arnold?

A. Yes, sir.

Q. Proceed.

A. In other words, the truck does all of the peddling and picking up, including also the picking up of all westbound shipments from Lake City, Live Oak and Madison, set out points for the Jacksonville package cars. No peddler cars are operated over this route.

The package cars loaded at Jacksonville close at 5:00 P. M. for movement from Jacksonville on Train 83 at 8:00 P. M., and are set out by this train at Lake City at 11:30 P. M., Live Oak at 1:00 A. M., Madison at 2:20 A. M., and at Tallahassee at 5:00 A. M. The package cars loaded by [fol. 1803] Jacksonville for Quincy and River Junction are also set out at Tallahassee by Train 83 and are moved from there by No. 83's connection for River Junction at approximately 9:00 A. M. arriving Quincy at 10:00 to 11:00 A. M., and at River Junction from 11:00 A. M. to 1:40 P. M., or the car for Quincy may be handled on the Quincy switcher leaving Tallahassee from 8:00 to 9:00 A. M., arriving Quincy from 10:00 to 11:00 A. M.

While package cars are operated from Jacksonville to the points named, due to the early closing hours necessary for the package cars, freight is received for truck movement up to 7:00 P. M., which enables the truck to handle shipments consigned to these set out stations received too late, or not ready for forwarding in the cars, advancing the movement of that freight twenty-four hours. For that reason to prohibit the use of the truck for the handling of shipments moving from Jacksonville to these points would delay the delivery of some of the business consigned to them.

Q. At this point, Mr. Arnold, it may be suggested that shipments moving, for example, from Jacksonville to Wellborn, the first station beyond Lake City, could be handled from Jacksonville to Lake City on the package car set at that point and then picked up by the truck and delivered to Wellborn; or that a shipment from Jacksonville to Lee could be handled from Jacksonville to Lake City on the [fol. 1804] package car set out at Live Oak, picked up by the truck at Live Oak and carried to Lee? Will you state whether this is a practicable method of handling such business?

A. It is not practicable, first, because the truck is moving ahead of the train. In other words, the truck leaves Jacksonville at 7:00 P. M., and Train 83 leaves Jacksonville at 8:00 P. M. The truck passes all of these set out points prior to the arrival of the train. Second, even if this were not the case there are no night station forces at these points to unload the cars.

Q. How do you explain your statement that the truck runs ahead of the train on this route, whereas you have

stated that the freight may be received at the Jacksonville warehouse for the truck some two hours later than for the package cars?

A. Simply because the truck leaves directly from Jacksonville warehouse, whereas the package cars must be moved from the warehouse to the yard, some three miles, through a very congested terminal area, to be switched into the train, and the train actually leaves Jacksonville one hour later than the truck.

Q. And runs behind the truck all the way along this route?

A. That is correct.

Q. Will you now take up the key stations named on this route and discuss the effect of the resulting restrictions [fol. 1805] upon the use of the truck upon the movement of traffic from Jacksonville along this route?

A. If the stations named are retained as key stations, with present restrictions, the result would be that freight loaded on the truck at Jacksonville, or at any point east of Monticello, destined to Tallahassee or any point west or north thereof, could be handled by truck only to Lloyd or Perkins, and there unloaded, making it necessary to transfer from truck to car, requiring an additional stop for a train which does not do local work, or else seriously delay the freight. This would mean, further, the use of an additional car which is not now used, and it would be necessary for the local freight the day before to move an empty car from Tallahassee to Perkins or Lloyd to be placed for this transfer. It would also make it necessary to provide stations employees at night where none are now employed. If any station, other than those named, on this route were designated, this situation would simply be aggravated.

Q. I suppose you have in mind stations between Tallahassee and Jacksonville?

A. That is right.

Q. Mr. Arnold, you have up to this point treated with the westbound movement on this route. Now take up the eastbound movement.

A. Eastbound, River Junction loads a package car for [fol. 1806] Jacksonville; Quincy loads a car for Jacksonville frequently but not every day; Tallahassee loads a car daily to Jacksonville. There are no other eastbound package cars loaded on this route. Therefore, the effect of the restrictions is that no freight could be moved by truck from

River Junction to Quincy, or through Quincy to any point east thereof, or from Quincy or any point east thereof, or from Tallahassee to Monticello, or any point east thereof.

As I have previously explained, the truck does all of the picking up and the retention of the restrictions would require that the train from River Junction to Tallahassee handle peddler cars, which are not now operated, in order to get the freight from River Junction and intermediate points to Tallahassee. Shipments originating at Tallahassee could not be handled by truck from Tallahassee to Monticello, or any point east of Monticello, making it necessary that the local trains operating between Tallahassee and Baldwin handle peddler cars, which are not now operated, and with consequent delays of these local shipments.

Q. You are speaking of Eastbound trains now between Tallahassee and Baldwin are you not?

A. North movement, yes.

Q. I wish you would contract the movement of a shipment from River Junction to some point intermediate between Monticello and Jacksonville, as it would be handled by truck and as it could be handled if the key station re-
[fol. 1807] strictions now imposed must be observed.

A. A shipment originating at River Junction, received from the L&N in interstate movement, consigned to Lake City, would leave River Junction if handled by truck at 12:45 P. M., and arrive at Lake City at 12:45 A. M., providing early delivery the following morning.

Q. That is the way it is now handled, I believe.

A. Correct.

Q. Proceed.

A. If handled by train, would leave River Junction from 1:00 to 3:45 P. M., arriving Tallahassee from 3:00 to 7:30 P. M., where it would have to be held for a local freight leaving Tallahassee at 6:00 A. M. the following morning and arrive at Lake City at approximately 2:00 to 3:00 P. M. This would, as I have said, make necessary the operation of peddler cars from River Junction to Tallahassee and on the local from Tallahassee to Baldwin, which are not now operated and would also, of course, delay delivery of the shipment at Lake City from early in the morning to late afternoon.

Q. Would it serve any purpose to handle the shipment by rail to a point beyond Monticello, such as Greenville, and from that point to Lake City by truck?

A. No, because the truck passes Greenville before the arrival of the shipment by rail and the shipment would therefore have to wait over until the following day. Rather [fol. 1808] than do this, of course, we would carry it to Lake City by rail.

It is perhaps needless to point out that the difficulties which I have just described would be aggravated if any key stations other than those already named on this route are designated.

Q. You have so far discussed, Mr. Arnold, the effect of the key station restrictions upon the movement of traffic from Jacksonville west to points on this route and from River Junction east to points on the route. What would be the effect of the restrictions upon the distribution from Tallahassee of l. c. l. business now coming into that point in through package cars consigned to stations on this truck route, and upon shipments trucked into Tallahassee for forwarding in package cars for interstate destinations beyond?

A. As I have heretofore mentioned, no package cars are operated either to or from Monticello, and as I understand the theory of the key station restrictions, this would automatically eliminate Monticello as a key station, but as now restricted the effect would be that we could distribute by truck from Tallahassee to the east only to Perkins and Lloyd, and to the north and west only to Havana. All traffic consigned to other points on this route would have to be loaded on cars at Tallahassee and carried to some points beyond Monticello on the east or to Quincy on the west.

[fol. 1809] Q. You are speaking now of shipments coming into Tallahassee I believe for distributions to points on this line?

A. That is correct.

Q. Now take up shipments moving into Tallahassee from either direction by truck.

A. Shipments now moving into Tallahassee from either direction by truck for forwarding from that point in through package cars to interstate destinations would have to be unloaded at some point east of Monticello and handled to Tallahassee by train. Or a shipment from Mount Pleasant on the west could be handled only to Quincy by truck, where it would have to be transferred to a car. As I have previously explained, all of the pick up is done by

the truck, including those stations at which package cars are now set out,——

Q. As destinations for the package cars you mean?

A. That is right.

Q. Proceed.

A. —And to restrict this would require us to provide package and peddler cars for this service. Furthermore, the effect from the delay standpoint would be the same as I have described in connection with eastbound shipments from River Junction.

Q. Now, Mr. Arnold, will you state what package cars or peddler cars, in addition to those now operated, would have [fol. 1810] to be provided if the restrictions resulting from the key stations now named will have to be observed?

A. A minimum will be a peddler car each way on the local freights operating between Tallahassee and Baldwin.

Q. Mr. Arnold, can we successfully operate our coordinated truck service over this route under any restrictions, and, if so, please state what restrictions would be unobjectionable?

A. As I have explained, the package car loaded at Jacksonville for River Junction handles satisfactorily the business received at Jacksonville for River Junction, except that which cannot be loaded in this car by 5:00 P. M. To this extent it would be prejudicial to prohibit the handling of l. c. l. shipments on the truck from Jacksonville to River Junction. While this business is of some importance and we would prefer to handle by truck from Jacksonville to River Junction, such a restriction would not be otherwise objectionable.

Q. That does not, of course, apply on shipments moving from Jacksonville consigned to any points intermediate between Jacksonville and River Junction?

A. We are referring only to the car from Jacksonville to River Junction.

Q. But I was speaking of the restrictions which you said would not be otherwise objectionable. You are speaking only of traffic which moves from Jacksonville all the way to River Junction and not to business moving from Jacksonville to any point intermediate between Jacksonville and [fol. 1811] River Junction.

A. That is correct.

Q. Proceed.

A. The package cars now operated from Jacksonville to Lake City, Live Oak, Madison, Tallahassee and Quincy satisfactorily handle the shipments consigned to these destinations, and with the same reservation with respect to the late shipments referred to, a restriction prohibiting the handling by truck from Jacksonville of shipments consigned to Lake City, Live Oak, Madison, Tallahassee and Quincy would not be otherwise objectionable.

It should be distinctly understood, however, that any restriction imposed should not prohibit us from handling traffic from Jacksonville through one or more of these points to any destination on this route other than those named above, or prohibit us from picking up westbound traffic at any point on this route, other than Jacksonville, destined to any other point on the route or beyond.

The package cars now operated from River Junction and Tallahassee to Jacksonville handle satisfactorily the business originating at these points destined to Jacksonville or beyond, and a restriction prohibiting the transportation wholly by truck of this traffic would not be objectionable. We do object, however, to any restriction which would prohibit the picking up of traffic by trucks at these points [fol. 1812] destined to any point on the route, other than Jacksonville, and we also want to pick up shipments at any point on the route for delivery to any other point thereon except those moving from River Junction and Tallahassee to Jacksonville.

While, as stated, we do operate a package car from Quincy to Jacksonville, this is done only when the available business justifies, and since this is not a regular daily operation, a restriction which would prohibit the handling by truck of l. c. l. business from Quincy to Jacksonville would leave this business without satisfactory service when the package car is not operated, hence, we ask that no such restriction be imposed.

The package cars now operated from Tallahassee to Quincy and River Junction satisfactorily handle the business moving from Tallahassee to those two points, and a restriction prohibiting the transportation of such traffic wholly by truck would not be objectionable. It should be distinctly understood, however, that this restriction should not prohibit the transportation through Tallahassee and Quincy of traffic picked up by the truck east of Tallahassee and consigned to points west of Tallahassee other than

that from Jacksonville to Quincy and River Junction, the restriction upon which I have stated would not be objectionable, and consigned to any point west of Tallahassee. [fol. 1813] Q. Will you now discuss the route between Tampa, Fla., and Sebring, Fla., Docket MC 86687, Sub. 19.

A. No key stations have been named on this route. The order of January 24, 1941, did not cover this route. At the time we filed our petition seeking the elimination from all of our certificates of the prior or subsequent rail-haul restriction, the certificate authorizing the operation of the Tampa-Sebring route had been issued, and consequently the petition did not mention the route. When this certificate was subsequently granted, it contained, and still contains, the prior or subsequent rail-haul restriction, which is, of course, objectionable to us for the reasons stated in the petition for modification of this restriction with reference to other routes. Since the Commission, in the Report and Order of January 24, 1941, has adopted the key station plan, we assume that the policy there announced will also be applied to the Tampa-Sebring route, and that consequently the prior or subsequent rail-haul restriction will be removed. I shall therefore discuss this route from the standpoint of the key station plan.

There are now no package cars operated between any points on this route.

The truck is in operation on the route.

Tampa receives package cars from a number of points, [fol. 1814] including northern and western points such as Chicago, St. Louis, Cincinnati, Hamlet, N. C., and Richmond, Va., containing freight consigned to points on this route.

There is no through freight train service between Tampa and Sebring, local trains being operated over various segments of the route. L. c. l. shipments moving by train from Tampa consigned to Sebring would leave Tampa at 7:30 A. M. and would not arrive at Sebring until 5:00 to 6:00 P. M. In the reverse direction, a shipment would leave Sebring by train at approximately 1:00 A. M., and would not arrive at Tampa until 6:00 P. M. The truck, however, leaves Tampa at 6:00 P. M. and arrives at Sebring at 11:05 P. M.; on the return movement, leaves Sebring at 11:35 P. M. arriving at Tampa at 3:20 A. M., expediting deliveries by twenty-four hours.

Since, as stated, there are no package cars operating between any points on this route, there is no conceivable reason for the imposition of any restrictions upon the full use of the truck, but on the contrary, any restrictions would destroy the purpose for which the truck service is designed.

Mr. Abeles: That Mr. Examiner, closes our case in chief.

Exam. Livingstone: We will take a recess until 1:30.

(At 12:05 O'clock P. M. the hearing recessed until 1:30 O'clock, P. M.)

[fol. 1815] Afternoon Session

1:30 p. m.

Exam. Livingstone: Are the protestants ready to proceed?

Mr. Abeles: Before the protestants proceed, it has occurred to me that in order to complete the record, it might be well to recapitulate the restrictions which in the course of Mr. Arnold's testimony would be unobjectionable in connection with the several routes which he has covered for that purpose. I would like to recall him briefly if that is satisfactory.

Exam. Livingstone: All right, sir.

C. D. Arnold testified further as follows:

Direct examination (Cont'd).

By Mr. Abeles:

Q. Will you now state the routes on which the applicants do not object to the imposition of certain restrictions in the use of their motor carrier service and what those restrictions are with respect to each route?

A. Between Richmond, Va., and Henderson, N. C., restrictions to apply from Richmond to or through Henderson, from or through Henderson, to Richmond; from Richmond to Petersburg proper, to Petersburg proper but not including traffic moving from Richmond through Petersburg to points between Petersburg and Henderson; between Raleigh, N. C., and Hamlet, N. C., on the route between Raleigh, N. C., and Hamlet, N. C. Restriction to ap-

[fol. 1816] ply from or through Hamlet to or through Raleigh; from or through Raleigh to or through Hamlet. On the route between Hamlet and Wilmington, restriction to apply from Wilmington to or through Hamlet. On the route between Monroe, N. C., and Rutherfordton, N. C., restriction to apply from Charlotte to Monroe and points beyond, not including traffic originating between Charlotte and Rutherfordton.

From Monroe to Charlotte, not including traffic destined to points between Charlotte and Rutherfordton, restriction is to apply.

On the route between Jacksonville, Fla., and River Junction, Fla., restriction to apply from Jacksonville to River Junction.

Mr. Inglis: You haven't made that clear to me. You mean you do not object to restrictions applying on operations from Jacksonville to River Junction?

The Witness: That is correct. From Jacksonville to Lake City, Live Oak, Madison, Tallahassee, and Quincy, not including freight from Jacksonville destined to any other point on this route.

From River Junction and Tallahassee to Jacksonville, not including freight from River Junction or Tallahassee, destined to any other point on this route.

From Tallahassee to Quincy or River Junction, not including freight destined to any other point on this route.

Q. As to the route which you have not mentioned, Mr. Arnold, I understand that—will you not regard the opera-[fol. 1817] tion of trucks over those routes as feasible, practicable, or effective if any restrictions are imposed, is that correct?

A. That is correct.

Q. Is there anything else you wish to say, Mr. Arnold, regarding these restrictions?

A. No, I think that is sufficient.

Mr. Abeles: That is all, Mr. Examiner.

Cross-examination.

By Mr. Beall:

Q. Mr. Arnold, in the course of your testimony you pointed out that with respect to the operating authority which had been granted you by the Commission on these

several sub numbers as to part of them you were operating and as to other subs or parts of subs you were not operating. Have you gotten any permission from the Commission to suspend or fail to operate these branches that the Commission found public convenience and necessity for?

Mr. Abeles: At the outset, I would like to meet that question with the objection that there is involved in this proceeding solely the issue as to whether or not Condition 3 as imposed by the order of January 24, 1941, should be modified. That excludes from consideration any questions dealing for the public convenience and necessity of these routes, or any question dealing with any issue other than that sole matter for the consideration of which the proceedings were re-opened. I think the question Mr. Beall [fol. 1818] has just asked clearly falls beyond the scope of the purpose of this hearing.

Mr. Beall: I would like to state the theory that I have with respect to this case.

Exam. Livingstone: All right.

Mr. Beall: We are opposing the removal of the restrictions that the Commission has put in the certificates on the ground that the removal or modification requested will result in monopoly of motor transportation by railroads and will result in destructive competitive practices, will create unsound economic conditions in both railroads and truck lines; therefore, we are opposed to the removal of them. The question I propose to ask the witness has been directed toward showing some of those results.

Exam. Livingstone: For the purpose of the hearing, you may ask the question. Read the question again, please.

Mr. Beall: Objection.

(Last question read by the reporter.)

Mr. Abeles: I object to the question on the further ground, Mr. Examiner, there is no provision of the Motor Carrier Act as far as I know, any other law——

Exam. Livingstone: The truth of the matter is you just failed to operate, is that right?

The Witness: Yes.

Mr. Abeles: The question could be answered yes or no.

[fol. 1819] Exam. Livingstone: The answer is no.

By Mr. Beall:

Q. Are you familiar with the prior record that was made in these proceedings, Mr. Arnold, in the 1937 hearings I am particularly referring to?

A. I wasn't in the 1937 hearing, but I have some familiarity with some of it.

Q. Are you still relying on that record to support the showing of convenience and necessity in connection with these operations?

Mr. Abeles: I object, Mr. Examiner. I think it is quite clear the question is directed to a matter which is outside the scope of this hearing. It can only have to do with the matter of public convenience and necessity of the proposed operation, and I am objecting, not because I have any reason not to want the answer to go into the record, but because I think if we are going to permit questions of that sort, it is going to throw open the whole question of whether or not we are justified in operating these services. That has been decided once and for all. The sole question before us here today is whether one of the conditions which was imposed upon the operations shall be modified.

Exam. Livingstone: It is very true, Mr. Abeles.

Mr. Beall: At the prior hearing, these were heard as separate proceedings before separate joint boards. The motor carriers made repeated efforts to show the com-
[fol. 1820] posite effect of these operations.

In no less than fifty occasions through this record Mr. Abeles said there was no relationship between one segment and another, they had no connection, they were never going to connect them up, they didn't want to run trucks through on that representation. The Chairman of the joint board upheld the objection and there was not one syllable allowed in the record covering the effect of these composite operations. Now, they are coming here today and show that they have got to combine Subs. 1 and 3 and Subs. 9 and 10 to make a continuous operation and to operate them at all, absolutely in the teeth of every statement that was made on the prior record at the prior hearing on which the Commission had before them, the only thing it had before them when it found convenience and necessity in the first place.

I think we should be permitted to explore this whole situation fully, because the key point or the removal of

these key point restrictions is a small part of this whole problem. The Commission now has the whole problem before it. I ask permission to proceed along those lines.

Mr. Abeles: I must ask the opportunity to answer Mr. Beall's statement, because he is obviously laboring under misapprehension as to what we are now proposing to do. We are not asking for the authority to hook up these routes [fol. 1821] and that one exception was pointed out at the hearing on the original application to which Mr. Beall refers. It isn't true that we are asking for combined operation of these routes. Mr. Beall is simply mistaken about that. I ask him to point out where we are doing so. In any event, as I say, that question is closed.

If we had asked for the opportunity to operate these routes in combination with each other, the Commission has granted it by issuing the certificates of public convenience and necessity so that, as I say, if what Mr. Beall is directing his questions at is to be allowed to be explored, then we are re-trying everyone of these cases, and we might just as well reopen the whole subject for public convenience and necessity. That is perfectly obvious from the Commission's order what it does not want to do.

Mr. Beall: I submit, Mr. Examiner, we are only re-trying it to determine the extent these key point restrictions should be modified. This whole thing goes to that.

Exam. Livingstone: That is true.

Mr. Inglis: I would like to call your attention to a holding which has at least been made in some of the sub numbers; that is that there has been no showing of public convenience and necessity in the particular cases to which this state-[fol. 1822] ment applies, except for a service which was in fact auxiliary and supplemental.

The petition for modification here and the order assigning the petition for modification for hearing both have to do with the extent or the degree that the service to be operated will be auxiliary or supplemental. If we eliminate the key station plan, which is the retarding influence, the impediment, the protection against an unrestricted, a full—to use Mr. Arnold's phrase—truck operation in the territory involved, we then eliminate the restriction upon which the operation was allowed in the first instance, and you are unavoidably then fresh in the full phase of public convenience and necessity, directly contradicting the prior holdings of the Commission.

Let's do what we are going to do frankly, fairly, and without subterfuge. If we are approaching this thing with the idea of showing public convenience and necessity, let's do it, but let's don't do it with the idea of eliminating the protection that has been afforded other carriers on a direct holding, that there is no public convenience and necessity for an unprotected service. Let's approach the thing as it should be and either eliminate the restrictions, make it back to public convenience and necessity, meet that issue or let's go ahead and handle the thing as it is represented to be as an operating problem with details.

[fol. 1823] Mr. Abeles: I didn't follow Mr. Inglis throughout there. There are certain things he said of which I take issue.

Exam. Livingstone: The final report disposed of the issue of public convenience and necessity. The only problem involved in this hearing is the definition of the key points.

Mr. Beall: As I understand, Mr. Examiner, the other report disposed of the question of convenience with restrictions as were set out in that report, not on any other basis subject to those restrictions and with those restrictions there is no possibility of drawing the inference that without those restrictions or without those identical restrictions, the Commission would even have found convenience and necessity, because the Commission had to find more than convenience and necessity to issue this order.

Exam. Livingstone: Of course, it would involve the question of convenience and necessity in some manner by eliminating any one of the key points. Proceed with your question.

Mr. Beall: Are you still relying on the prior record in the proof of your convenience and necessity?

Mr. Abeles: I again object to that question. As I say, it brings squarely to the forefront of whether the question of public convenience and necessity is to be again explored in this hearing or not. If the Examiner rules against me on that, then as I see it there is no limit of what we are to be [fol. 1824] permitted to examine in this case.

Exam. Livingstone: Well, the objection may be overruled.

The Witness: As I understand it, the Commission issued its first order on the original hearing, and then it issued a

subsequent order changing the restrictions. I don't know——

Mr. Beall: I think maybe you misunderstood my question. I merely asked are you relying on the original proof that you made of public convenience and necessity.

The Witness: As to public convenience and necessity?

Mr. Beall: Yes.

The Witness: I would say so.

By Mr. Beall:

Q. Will you please refer to the map which was identified as Exhibit 1?

Mr. Abeles: My attention has just been called to the fact that although this exhibit was offered it has not yet been received.

Exam. Livingstone: Is there any objection to the receipt of Exhibit 1?

Mr. Inglis: I object to its introduction in evidence because of an inaccuracy which I will bring out on cross-examination.

Mr. Abeles: Let's settle it once and for all now, Mr. Examiner, I can't see any conceivable objection to the admissibility.

[fol. 1825] Mr. Inglis: If I may be allowed to ask three or four questions at this time.

Exam. Livingstone: Is that agreeable?

Mr. Beall: I submit that it is usual to move to the receipt of an exhibit at the time of conclusion of cross-examination.

Mr. Abeles: I will pursue that course.

By Mr. Beall:

Q. The map, I take it, is a map of the Seaboard Railroad System, is that right, sir?

A. It is an outline map of the Seaboard System.

Q. These lines shown on the map are lines of railroads, they are not highway lines?

A. That is correct.

Q. Does this show all of the Seaboard System Lines?

Mr. Abeles: You are speaking of the rail system?

Mr. Beall: Yes, of the rail system.

The Witness: I believe it does.

Mr. Beall: Looking to the portion of the map in Virginia, you have a line going from Norlina over toward Portsmouth. Do you have a truck operating right on that line?

The Witness: No, sir.

By Mr. Beall:

Q. On the line down to Hopewell, do you have rights on that?

A. No, sir.

Q. I mean down in North Carolina, you have a line run-
[fol. 1826] ning over to Durham. Do you have any truck rights there?

A. No, sir.

Q. The line from Boykins down to Lewiston, what is the situation there? Do you have any rights or operations?

A. None, if you are speaking of trucks now.

Q. I am speaking of trucks.

A. I mean Seaboard trucks.

Q. Are there any truck operations conducted by the Seaboard other than those you have colored up on this map?

A. Yes, sir.

One between Hamlet and Monroe, one between Jacksonville and Tampa, one between Tampa and what is shown on here as Lake Villa and Tarpon Springs and Newport Richey, but that also serves Brooksville, which is a station that hasn't been shown on this map, and there is one between Rhine and Lyons, Ga.

Q. Are there any others?

A. I don't think I have overlooked any.

Q. On this line through Atlanta over toward Birmingham and Bessemer, anything over in that territory?

A. No, sir.

Q. Have you any applications for authority pending on any additional routes now?

A. None to my knowledge. I don't believe we have.

Q. Is that true both with respect to applications before
[fol. 1827] the Interstate Commerce Commission and the State Commission for intrastate rights?

Mr. Abeles: Don't answer that question. I think the trend of Mr. Beall's question indicates the need for the sustaining of the objection I have repeatedly made. There is not a single question he has asked that has the slightest bearing upon the issue before us here.

Mr. Beall: I won't press that one.
Exam. Livingstone: Proceed.

By Mr. Beall:

Q. As I understood the testimony, as I believe it was pointed out that the notice of the Commission included more subs than were involved in the petition filed with the Commission by the Seaboard, under date of April 28, 1941. That is correct, isn't it?

A. Yes. That was explained, I believe in connection with the Tampa-Sebring route.

Q. You did discuss some of them. I want to ask you if you know or maybe Mr. Abeles can tell us whether these people that were parties to the prior proceedings on these other subs were notified of this enlargement in the scope of these proceedings here?

Mr. Abeles: I will be entirely willing to answer that question although unless they are parties whom you represent, I don't see——

Mr. Beall: I expect I represent them if anybody does.

[fol. 1828] Mr. Abeles: All parties were.

Mr. Beall: Of the prior subs.

Mr. Abeles: Yes, all parties of record, of course.

Mr. Beall: I meant that.

By Mr. Beall:

Q. You testified at considerable length with respect to most all of these subs in relation to the operation of package cars; when you came before the Commission with these applications, you didn't have the right to operate trucks, as I understand it, and you were applying for it and proving public convenience and necessity. You only had the right to operate a railroad, now the Commission gave you authority to operate trucks as well as a railroad. Now, couldn't the public be served, all that you showed there was a need for in this prior hearing with what you have now got from the Commission.

Mr. Abeles: I object for the reason I think that is far afield.

Mr. Smiley: That is no further afield than this applicant coming in, asking for relief of something he is not doing.

Mr. Beall: That is a little involved with what you have

now from the Commission, you could serve the public disregarding railroad convenience and addressing yourself only to public convenience if public convenience could be served with what you now have.

[fol. 1829] Mr. Abeles: You mean with the restrictions now imposed upon us, could the public convenience and necessity be as well served as without the removal of those restrictions?

Mr. Beall: I said it would be served.

The Witness: You are speaking of the truck authorities that we have.

Mr. Beall: Yes.

The Witness: As I understand it, the public necessity and convenience was proven in the original case and what I have been discussing all the time is the effect of these restrictions that have been imposed by this order of January 24, 1941, in the face of the original restrictions that were imposed——

Mr. Beall: I understood——

Mr. Abeles: Let him finish.

Mr. Beall: Excuse me, I won't cut him off.

The Witness: I can answer your question in this way, I have shown, of course, where the imposition of these restrictions would in cases delay the movement of the freight.

By Mr. Beall:

Q. Does that complete your answer?

A. That is about all the answer I know that I can make to your question.

Q. Now, if what I was inquiring of isn't clear maybe I can clear it up further. I listened very carefully to your testi-
[fol. 1830] mony. As I get it, you were discussing the railroad convenience that would be served by lifting these key points rather than pointing out anything as to additional public convenience, you have authority to serve the public. Now it is a question, isn't it, whether it is convenient to the railroad to do it the way the Commission has given you authority to do it or not?

Mr. Abeles: The question is very argumentative. He is asking for conclusion rather than statement of fact which can be argued on brief.

Mr. Beall: I am asking for a fact.

Exam. Livingstone: Ask direct questions, reframe that, please.

By Mr. Beall:

Q. Isn't it a fact you can perform truck service to all these points under the authority you now have?

A. Well, no, we could not perform truck service between Aberdeen and Southern Pines, for example, where there is no intervening station.

Q. Those two stations are right a-joining there?

A. That is correct.

Q. They are only three or four miles apart, aren't they?

A. That is correct, That is what I say. We couldn't serve either one of those points with this restriction.

Q. They are adjoining stations as shown on your map, No. 1, what about the actual situation on the ground, aren't there other stations there, other stations between those two? [fol. 1831] A. Not as I know of. There is no agency station in there. I don't believe there is even a side track in there.

Q. Is there any volume of business moving between those points you know of?

A. Between Aberdeen and Southern Pines, yes, sir.

Q. Interstate freight?

A. Yes, sir, there is some moving in there.

Q. Can you give us any idea what kind of freight it is that is moving interstate?

A. It would be freight as we have explained coming into Aberdeen now in a package car must be distributed or handled in a package car—I mean into Hamlet in a package car must be distributed or some other point must be distributed.

Q. Is there some other point like that you can point out?

A. Well, down here on the Wilmington line we have Laurinburg, Maxton, and Pembroke.

Q. You have a lot of intermediate stations in there, don't you?

A. There is no agency point in there.

Q. Maybe it would be a good idea to clear up here. Will you tell us for the record what you mean by agency point?

A. I mean a point where we have a building and an agent to transact business.

Q. These non-agency points, do you handle l. c. l. freight at non-agency points?

[fol. 1832] A. Only occasionally.

Q. When you have it, you handle it?

A. That is prepaid from the point of origin. It is the responsibility of the receiver to get it. We don't do anything but put if off.

Q. Off the train?

A. The train, it would be put off by the truck if the truck is going by there.

Q. The principal question is a question of prepayment, that is one of the principal differences, not the only one between agency and non-agency station?

A. No, that is not the only difference.

Q. I said one of the principal differences. Now, in this testimony about re-arranging these key points intermediate points where we might set off cars referring to the convenience to the public, have there been petitions filed with the Commission on that subject?

A. I don't see where that would affect the public convenience, I said we might change the car that is now loaded, for instance, from Richmond to Sanford, we might eliminate that and load the freight in the car going to Raleigh, that would be primarily an operating benefit by not being necessary to move a car from Richmond to Sanford.

Q. It is an operating problem?

A. Yes.

[fol. 1833] Mr. Abeles: Might I ask you a question at that point, is it your theory that operating economies are not properly regardable as element of public convenience and necessity. The reason I am asking that is to be guided by my objection or failure to object.

Mr. Beall: I don't think I had gone that far.

Mr. Abeles: You know the Commission has held otherwise?

Mr. Beall: I won't go that far. I think you put a great deal in the record with respect to operating economies at the first hearing.

Mr. Abeles: That is quite true.

By Mr. Beall:

Q. Mr. Arnold, can you give me any suggestion at all as to how much tonnage you feel should be handled at a station to justify the shopping of the peddler trains?

A. Well, the peddler trains would stop, the peddler trains now, not the through trains, but the peddler trains must stop and put off a package and pick up a package regardless of how much it is.

Q. Perhaps I didn't make my question clear. Assuming you have the right to operate trucks as well as the railroad, then what tonnage basis, if any, would mark the dividing line between a station where you would willingly stop your freight train or one that you would substitute the truck service so as to not delay your through train by having a [fol. 1834] stop at these stations, what tonnage would determine when it would be wise to put truck on and let the train go on through?

A. No. There is no test on that.

Q. None whatever?

A. Now you are talking about peddling freight from a peddler car, that is less than carload quantity, how you are going to test that peddler car, would serve a large number of points, put on and take off truck would do the same thing. I don't get what you are talking about there.

Q. At the prior hearing, testimony was to the effect these trains that performed the peddler service also had carload freight on them, they were anxious to get to the end of the line, they didn't want to hold them up; if you could operate trucks, you could eliminate a lot of these little stops?

A. Yes.

Q. Tell me, what is the dividing line between a little stop you would like to eliminate and a regular stop you would regard as part of normal railroad operation?

A. I still couldn't see exactly what you mean. A peddler car and a local freight train handling a peddler will have any number of shipments for any number of points and it peddles and pick up, puts off, and pick up, so would the truck, and if the truck goes on, what we said was that the peddler car would come off, or where the truck is now operating, they are not operating a peddler car so the truck is [fol. 1835] handling all of it, I don't get what you mean is what is the dividing line, whether the truck is right now handling all of it.

Q. There would certainly be some stations, you wouldn't handle all your l. c. l. truck by truck out of there, some of the heavy volume you ship it by rail anyway?

A. You are talking about something else.

Q. I was talking about that in the first place, but didn't make it clear. Can you give us any volume at all of the volume of freight, the size of the town where it would be more economical to use the trucks than it would be in stopping your freight trains to handle this l. c. l. freight?

A. Is this what you mean, I have said that, for instance, on the Jacksonville—I think the best illustration—on the Jacksonville-River Junction Line where the truck is now operating that we would, that we are now operating and will continue to operate local set out package cars to Lake City, Live Oak, Madison, and Tallahassee, from Jacksonville.

Mr. Beall: As I understand your answer to my question is that you don't have in your mind any figure whatever as to tonnage or population that would set off these towns that you would want to continue to serve by rail as distinguished from those you would continue to use trucks on?

The Witness: No, individual situation.

By Mr. Beall:

Q. The matter of operating these package cars, have you [fol. 1836] any figure in mind with respect to the tonnage which you would expect to put in a package car in order to make that a reasonable railroad operation?

A. Well, that would vary from day to day.

Q. Yes, of course.

A. But I don't know where you could get a dividing line there to work on. If it turns out eventually that there is not sufficient tonnage there to justify the continuance of that car, probably we would ask for elimination of that as a package car point, but that would be something else.

Q. Would it be three tons per car or ten tons per car?

A. Well, now, you would have to take into consideration possibly a lot of things there, putting three tons per car from Live Oak, it now moves in a package car, on the truck would cut out that package car, then we would possibly cut it out.

Q. If you only had three tons, you would probably cut the package car?

A. It may run up three or four tons or more.

Q. Would you say if it got above four tons you would still keep the package car there or would it be higher than four tons?

A. I can't give you any figure on that.

Q. You have no figure in mind as representing a reasonable demarcation of the economical operations for package cars?

A. I don't see how we can decide that here, that is outside of this issue.

[fol. 1837]

Q. I take it that you haven't given the consideration.

A. We haven't applied that figure to this operation, if that is what you are trying to get at.

Q. You haven't applied any fixed principles in connection with your petition of modification of these restrictions by the Commission either?

A. No, we have said where we are now operating, and we will continue to operate them.

Q. On your Seaboard Air Line Railroad, can you tell me what your average carloading is on lcl freight for your system?

Mr. Abeles: I object, Mr. Examiner. I think we have gone again beyond the point of legitimate cross-examination as far as the issues of this case are concerned.

Mr. Beall: That is a simple question, a matter of record.

Mr. Abeles: It may be simple but it has nothing to do with the propriety of the key station restrictions which are being considered here today, Mr. Examiner. It doesn't have anything to do with the specific issue.

Exam. Livingstone: What does LCL freight have to do with this?

Mr. Beall: We had a whole morning of testimony with respect to operation of package cars where they would be justified, where they might not be, where it would be more convenient to do it some other way than by the method prescribed by the Commission. I am trying to find out whether the Commission's present regulations are entirely reasonable, whether the loadings if they complied with the Commission requirements might be equal to or exceed what they are doing on the system as a whole, where there might be a reason for reducing to modify them.

[fol. 1838]

Exam. Livingstone: Do you have any traffic figure available?

The Witness: I haven't, to go into all that kind of detail. I didn't understand that sort of issue was before this hearing.

Exam. Livingstone: Just answer the question, then that you have no traffic figures available.

The Witness: All right.

By Mr. Beall:

Q. If you don't know what the l. c. l. carloadings are on the Seaboard, do you know what the national figure is for l. c. l. carloadings?

Mr. Abeles: I think that is ridiculous, Mr. Examiner. I object to it. Don't answer the question. I object to it and ask the Examiner to sustain the objection.

Exam. Livingstone: Sustained.

By Mr. Beall:

Q. Mr. Arnold, in connection with the line from Hamlet up to the town of Bracey in Virginia, as I recall your testimony, you said you were not operating there now?

A. Hamlet to Bracey?

[fol. 1839] Q. Yes, or am I wrong about that?

A. No, we are not operating from Hamlet to Bracey.

Q. I think you said that is right, that you are not operating from Hamlet to Bracey, that is right?

A. That is right.

Q. The Commission has apparently designated quite a number of so-called key points in there which you are asking to have removed. Let me ask you without having given this operation as set up by the Commission, a trial, how can you tell us that there is any need for a modification of it when you haven't even tried it.

A. Well, I don't think you would have to do that to tell what effect it would have if you did try it.

Q. How can you tell what tonnage would be in these set off cars at these various points which you would distribute by truck up and down the line as outlined by the Commission, without trying it, how can you possibly tell?

A. I don't know just what you mean, but I have said or undertaken to show what effect it would have on the operation of package cars and peddler cars if these restrictions are imposed. Now, I said that we are operating a package

car from Richmond to Sanford, and that it might be possible by loading the freight in the car that is now operating from Richmond to Raleigh, to eliminate the car as now operating from Richmond to Sanford. As it is now, we have got to get the freight for these contiguous stations to some point [fol. 1840] where the switcher operating in that territory can get it.

Q. Isn't it a fact you have no way of knowing what the loadings would be for a package car that you might set out at any one of these key points the Commission prescribed in their certificate because you haven't even started the operation, haven't tried it out to find out, isn't that so?

Mr. Abeles: Mr. Beall, may I ask for clarification of that question. When you say we have no idea of what traffic will be carried to these set out points, do you mean by rail, because, of course, we are operating by rail now, and we obviously know what we are carrying. I must confess I find some trouble, as I think the witness does, in understanding just what you are driving at.

Mr. Beall: You are not, as I understand it, even by rail operating package cars to these numerous key points described by the Commission.

Mr. Abeles: I will let the witness answer that question.

Mr. Beall: I think he testified as to that all morning that he was not operating to many of those points, only some of them, he was operating them too.

The Witness: Let's see what you are going to ask.

Mr. Beall: I am going to ask you, isn't it a fact you can't possibly tell what the tonnage of a package car would be if you did operate one and set them out in accordance with the plan outlined by the Commission in their certificate? [fol. 1841] The Witness: As far as that goes, I couldn't tell what it is going to be this time next year if it continues to operate as it does now. You are talking about a future prognostication here. I couldn't do that. You want to know how much would we handle next year as it is operated right now on the rail.

By Mr. Beall:

Q. I am asking how much of your present rail tonnage would go in one of those package cars if you operated it. Obviously you don't know, because you haven't started the operation. I am only trying to point out, Mr. Abeles, the

apparent inconsistency in asking for modification and removal of restriction without first having at least given it a trial, that is the theory of the questions I am asking.

Exam. Livingstone: Proceed with your questions, please.

By Mr. Beall:

Q. How many trucks, for example, are you now operating between Petersburg and Bracey?

A. One.

Q. Only one truck?

A. Between Petersburg and Bracey, yes.

Q. Is there any division or section down here in which you are operating more than one truck?

Mr. Abeles: You mean throughout the system, Mr. Beall?

Mr. Beall: Yes.

The Witness: We are only operating one truck in one direction on the Jacksonville River Junction Line, we are [fol. 1842] operating two trucks one in one direction, and one in the other.

Q. Is that the maximum of trucks you are operating at any one section of the road?

A. Well, between Hamlet and Columbia and Sumter, we are operating two, one from Hamlet to Columbia, and one from McBee to Sumter.

Q. This truck up here in Virginia, you say you only have one that takes care of the distribution northbound and southbound too?

A. Only between Petersburg and Bracey.

Q. The one truck handles all the business both ways?

A. That is right.

Q. You have on some portions of your line more than one truck. You referred this morning to certain truck schedules and the advantages as you saw it to changing the key point, that would be in so far as schedules go, that would be a matter of putting on more trucks rather than changing key points, would it?

A. I think what you are talking about now is where I referred to two schedules between Henderson and Raleigh. That has been set up since the very beginning on that basis.

Q. If the present truck schedules didn't fit the operation, they would be corrected by putting on more trucks, couldn't it?

[fol. 1843] A. Yes.

Q. At the prior hearing, it was testified that it was not proposed to segregate these operations from the rail operations or to keep any separate account, either costs or revenue. Is that still your——

Mr. Abeles: I object. It has no competency or relevancy to the issues involved.

Exam. Livingstone: You may answer.

The Witness: That is still the fact.

By Mr. Beall:

Q. You say it is still a fact?

A. Yes, sir.

Mr. Abeles: May it be understood, Mr. Examiner, my exceptions to adverse rulings on my objections?

Exam. Livingstone: Yes.

By Mr. Beall:

Q. Mr. Arnold, are any of these lines of the Seaboard being paralleled by Railway Express Agency trucks?

Mr. Abeles: I object.

Exam. Livingstone: You may answer.

The Witness: Well, I can't answer that.

Exam. Livingstone: Just say you don't know the answer, and we will proceed to the next question if that is the case.

The Witness: I don't know the answer.

By Mr. Beall:

Q. Do you know how the express business is being han-
[fol. 1844] dled at these various intermediate stations here, that you want to serve by truck and stop your local trains from serving them?

A. Well, between——

Mr. Abeles: I object, Mr. Examiner, to all these questions relating to the handling of express.

Exam. Livingstone: What bearing does the handling of express have, Mr. Beall?

Mr. Beall: The Express Agency is what the name implies, an agency. The Seaboard is one of the owners. It operates as a branch of the railroad, taking care of lcl busi-

ness, which the railroad otherwise would be required to handle, so you are duplicating the service.

Exam. Livingstone: The express business is something separate and distinct from the rail transportation business.

Mr. Beall: If that were so, it would be quite interesting. The trouble is we haven't been able to find the man who can tell us the difference between them.

Exam. Livingstone: Proceed, please.

By Mr. Beall:

Q. Mr. Arnold, these points with respect to which you testified this morning, how many of them are served by other railroads?

Mr. Abeles: You mean all points shown on map Exhibit 1, Mr. Beall?

[fol. 1845] Mr. Beall: In so far as the truck operations are shown on Exhibit 1.

Mr. Abeles: You are not confining that to key stations, for instance?

Mr. Beall: No.

The Witness: Just how far do you want to go into that? We have got a very large number of junction points with other railroads.

Mr. Abeles: Do you want him to go through all this, Mr. Beall?

Mr. Beall: I think I will shorten it, Mr. Abeles.

By Mr. Beall:

Q. Let me ask you this question, if service by more than one railroad is a matter of public information, there is no use to have you take the time to read that into the record here. For the convenience of the record though, can you tell us how many, if any, points there are where another railroad is paralleling the Seaboard and serving the same points you are serving with parallel lines.

A. Now, it depends on what you mean by a parallel line, there is no one line that parallels the whole of the Seaboard Air Line. There is no parallel railroad between Raleigh and Petersburg.

Q. Mr. Arnold, I was asking the question to determine the proposition of having more than one railroad operating trucks as well as railroad, whether they also operate trucks,

[fol. 1846] that was the question, do you know of any of those situations off-hand?

A. I don't know of anybody operating a truck, of course, from Richmond to Petersburg, the Atlantic Coast Line also runs from Richmond to Petersburg.

From—well, there is no other parallel that I know of as far as these truck routes are concerned. The Southern Railroad has a line from Savannah to Columbia, there are only two common points they touch, that is Savannah and Columbia.

Q. These trucks which you operate, at the last hearing it was stated that the Seaboard doesn't own any so-called transport company or separate corporation, that these trucks were actually operated by the Seaboard receivers, that is still true, is it?

A. Yes, sir.

Q. May I ask you this, are these trucks owned by the Seaboard or are they leased from the Railway Express Agency?

A. The one between Petersburg and Bracy is operated for the Seaboard under a contract with the Railway Express agency under which the Seaboard pays the Railway Express Agency the cost of operating the truck.

Q. That is the only one, is it?

A. That is the only one involved in this.

Q. You testified this morning with respect to traffic arriving, I think at Portsmouth, you said by boat line, that [fol. 1847] you wanted to handle by truck. Does the Seaboard Railroad have any interest in boat lines?

Mr. Abeles: I don't see that that has anything to do with this, Mr. Examiner.

Exam. Livingstone: Answer the question if you know.

Mr. Abeles: I believe the receivers have some interest in the Baltimore Steam Packet Company.

Mr. Beall: Is that one of the lines that you were referring to this morning?

Mr. Abeles: What did you say?

By Mr. Beall:

Q. Is that one of the lines that you were referring to this morning?

A. It operates between Baltimore and Norfolk and Portsmouth.

Q. That was one of the lines you were referring to, handling the freight?

A. Yes.

Q. At the prior hearing, testimony drawing the railroad distinction between substitute service and co-ordinated service, as I recall it, the railroad proposed to institute co-ordinated service but not substitute service. Do you know whether since the last hearing the Seaboard has obtained permission from the Interstate Commerce Commission to publish tariff rules for substituted service?

Mr. Abeles: I object to that, Mr. Examiner. I don't see any possible relevancy of that question to any issue in this [fol. 1848] case. Now, if Mr. Beall can explain why he is asking the question and satisfy the Examiner that it has something to do with what we are considering here, then I will withdraw the objection, but I must persist in my objection to the questions which apparently are blind, lead nowhere and have absolutely nothing to do with what is before us here, simply encumbering the record. We are going on and on, getting nowhere and adding nothing to the evidence which the Commission should have before it in my judgment.

Mr. Smiley: I might call the Examiner's attention to the fact the objections have taken up more space in the record than the answer.

Mr. Abeles: I beg your pardon. Even if they were, I still have any right to make my objections in connection with this. I am asking Mr. Beall to explain what possible relevancy the question can have to any of the issues here.

Exam. Livingstone: Make your statement, please.

Mr. Inglis: I don't know what purpose Mr. Beall has in mind in asking the question; as to the relevancy, I think it is perfectly relevant to show what direction the receivers are headed toward here, if they are headed toward substituted service, truck service instead of toward a truck service that is auxiliary and supplemental, then the answer might be extremely pertinent and for that reason it is relevant irrespective of what purposes Mr. Beall might have had.

[fol. 1849] Mr. Beall: He has stated my purpose.

Exam. Livingstone: In order to expedite the hearing, you may answer the question.

The Witness: I don't understand the question. You will have to repeat it.

By Mr. Beall:

Q. Do you know whether since the last hearing in 1937 on these subs, the Seaboard applied to the Interstate Commerce Commission for permission to substitute this truck service for rail service, in other words, the substitute tariff rule?

A. I don't know anything about that. If they have it is beyond my information. I haven't the information about that.

Mr. Abeles: If the Examiner rules that question pertinent, I have a traffic witness here who can answer it, but I still can't see any possible relevancy to any question here under consideration.

Exam. Livingstone: The witness states he doesn't know the answer. Proceed, please.

By Mr. Beall:

Q. What records, if any, do you keep as to the tonnage which you are hauling on these trucks that are operated by the Seaboard?

A. There is a record kept in the Department of Revenue office of tonnage on the trucks.

Q. Does that also include ton miles?

A. I think that is the purpose for which he gets it, is to [fol. 1850] get ton miles to report to some of the states for tax purposes or something of that kind.

Q. Do you make a report to the Interstate Commerce Commission of the tons which you handle on these trucks you operate?

A. I don't know. I don't think so. In fact, I am sure they don't.

Q. You say you are sure they don't?

A. No such report made that I know of. I am not familiar with it.

Q. You say you are not familiar with it. Just in order to pick up the loose end for the record, Statement No. Q-225, for the year 1940 and issued by the Interstate Commerce Commission; Bureau of Statistics has information in it with respect to tons and ton miles and shows the Seaboard.

(A short recess was taken.)

Exam. Livingstone: Proceed.

By Mr. Beall:

Q. Mr. Arnold, the general effect of the removal of these key point restrictions would be to lengthen the permissible haul by truck, wouldn't it?

A. As compared with the key station restrictions as named in this order, yes.

Q. For instance, if Petersburg were eliminated, you could run from Richmond, at least, through to Henderson?

A. That is right, we have named a restriction there that would prevent moving it to Henderson or beyond Henderson.

[fol. 1851] Q. If there was a restriction placed on Henderson, it would stop you from going through it?

A. On this list, I have given here——

Q. There are a number of places where you have suggested removing restrictions where the hauls would be around 75 or 100 miles?

A. Yes, sir.

Q. Is that right?

A. Yes, that is right.

Q. Mr. Arnold, at the prior hearing the testimony was to the effect that this traffic was going to move at railroad rates on railroad bills of lading, is that still true?

A. Yes, sir.

Q. If that be the present proposal, as you state, how will it be possible to test the reasonableness of those rates, as applied to these long haul operations?

Mr. Abeles: I object to interjecting the question of rates into a hearing which is obviously designed——

Exam. Livingstone: Sustained.

Mr. Beall: May we have exception, Mr. Examiner.

Exam. Livingstone: Yes, sir.

By Mr. Beall:

Q. It was testified at the former hearing that it was not proposed to keep any separate accounting for these truck operations with respect to traffic and revenues, I would like to ask you if that is still your proposal, I believe you [fol. 1852] said it was.

A. I have said it was.

Q. I would like to ask you if that be so, how is it going to be possible for the Commission to police the operating rights if no records are being kept or are to be kept.

Mr. Abeles: Just a moment, you mean to police the observance of the restrictions, Mr. Beall?

Mr. Beall: Yes.

Mr. Abeles: I don't see the relevancy of that question, but I won't object if the witness knows.

The Witness: Well, the trucks record the shipments as they put them off. Those records would be available at the agencies where the trucks were loaded or from the truck driver's log covering this trip.

Mr. Abeles: When you say truck driver's log, are you talking about this driving time log?

The Witness: No.

Mr. Abeles: There is such a thing as a driver's log?

The Witness: Manifest.

Mr. Beall: That is different.

By Mr. Beall:

Q. Then if you have those records now and are making them at this time, would you have any objection to the Commission prescribing on your accounting restrictions in connection with any operating rights they might grant in connection with modification?

[fol. 1853] Mr. Abeles: I object for obvious reasons.

Exam. Livingstone: Sustained.

Mr. Beall: May I have exception?

Exam. Livingstone: Yes, to each adverse ruling, you may have exception.

By Mr. Beall:

Q. Is there any refrigerated service given down in this territory with respect to which you testified this morning?

Mr. Abeles: I object.

Exam. Livingstone: What has that to do with it?

Mr. Beall: It might do with the feasibility of putting on these trucks. I want to know what truck they have to take the place of any cars that might be taken off.

Exam. Livingstone: Do you understand the question?

The Witness: I think I do. We have no refrigerator service on l. c. l. freight.

Mr. Beall: Only on through freight?

The Witness: Carload.

By Mr. Beall:

Q. At the last hearing a number of independent motor carriers testified and offered to co-ordinate their services with those of the Seaboard. In connection with your proposal to eliminate certain key points and lengthen these points, have you given any consideration to the possibility of utilizing the service of independent motor carriers.

Mr. Abeles: I object, Mr. Examiner, that question was [fol. 1854] considered fully by the Commission in its report and order in these cases. In its original——

Exam. Livingstone: Yes, the objection is sustained.

Mr. Beall: Exception please.

By Mr. Beall:

Q. Would you be willing to furnish the Commission with a statement showing the tonnage originating and terminating at these various points involved in these motor carrier applications?

Mr. Abeles: May I ask before the witness answers that question, do you mean all the points served by the trucks, just the key stations points?

Mr. Beall: No, I had in mind all the tonnage from all the points that are going to be served by the truck operations.

Mr. Abeles: That evidence, Mr. Examiner, was very largely covered by the testimony in the original proceedings on the applications for the certificates and the Commission presumably considered it in its action on those applications. I would hesitate to accede to a request of that sort at the present time in view of the fact that I don't see that it has anything to do with the questions here before the Commission, and I would obviously involve an enormous amount of work. Perhaps if Mr. Beall could explain the purpose he has in making that request——

Mr. Beall: I am unable to concur in the proposition that it was covered at the prior hearing. There was some refer- [fol. 1855] ence to tonnage at a few points which included carload and less carload and included interstate and intrastate, all lumped together and the limited amount that was put in was, I believe, useless and that was why I am suggesting that more competent information be furnished the Commission so they will have something on which to base

a decision as to whether these points should or should not be modified.

Mr. Abeles: Of course, we are willing to furnish anything that the Commission wants that is available to us, but I would still like to know just what you have in mind as to the usefulness of such information for the limited purpose for which these proceedings have been reopened.

Mr. Beall: I would suggest, Mr. Abeles, that it would enable the Commission to determine whether the package car loadings at the points they have now designated would be sufficient to justify the amount of package cars at those points which you don't want to operate.

(Question read by the reporter.)

Mr. Abeles: You said you thought the Commission might want to know what the lading of the package cars was.

Mr. Beall: What it might be based on, the tonnage?

Mr. Abeles: Are you changing your request to the lading of the package cars because in answer to my first question you said you wanted this data for all of the points served by the trucks?

[fol. 1856] The Witness: That is right.

Mr. Abeles: Of course, you know all of the points served by the trucks are not served by package cars?

The Witness: That is right.

Mr. Beall: Now, my first statement was a request for the information, then you asked me why it should be requested and I said one of the reasons for getting it and having it in the record would enable the Commission to forecast what a package carloading might be at these points where you don't operate them, but where under their plan, you would have to operate them.

Mr. Abeles: I think the witness had better state whether in his opinion the furnishing of that information is feasible or not.

The Witness: Well, it would be feasible, but it would be an enormous undertaking.

Mr. Beall: Would it be feasible to show and separate the interstate from the intrastate traffic?

The Witness: It would be feasible, but as I say, it would be an enormous undertaking for the reason that it isn't recorded at each one of these points, it would have to be worked back from the original records——

Mr. Beall: Would it be possible to show the revenue involved in these shipments?

The Witness: Yes.

Mr. Abeles: You mean the total revenue received by the [fol. 1857] railroad.

The Witness: For the part of the haul.

Mr. Abeles: Not merely the truck part.

Mr. Beall: No.

The Witness: That would be an enormous job because of the way the accounts are kept, the divisions involved and all of that accounting procedure, because it isn't recorded. Now I say it would have to go to the original record at each station and would have to be worked that way.

Mr. Beall: Let me ask you this, would it be possible to show the information separating carload from the less carload traffic?

The Witness: Well, the carload traffic is available with less trouble, what I mean by that, that they could locate that revenue on that with less trouble, but the revenue accruing to any one station on less carload traffic is not recorded at the present time and to get it, we would still have something to go back to, the original record at each station to dig it out.

Mr. Beall: It would be possible to get it?

The Witness: It would be possible with an enormous amount of work and time.

By Mr. Beall:

Q. Will you furnish that information for the record?

Mr. Abeles: No, I can't consent to do that, Mr. Beall. [fol. 1858] I can almost say with my own knowledge it just won't be worth while to anybody. I mean in the light of the time and expense that would be involved.

Mr. Beall: You mean you would rather abandon the operating rights than furnish the information.

Mr. Abeles: No, because I have objected to all this line of inquiry on the ground of its relevancy. I don't think it has a thing to do with what we are asking for here.

Exam. Livingstone: Proceed, here.

Mr. Inglis: I would like the Examiner to rule on that.

Exam. Livingstone: I will not require the furnishing of such information.

Mr. Beall: I take it that is a ruling on the matter. May I have exception, please?

Exam. Livingstone: Yes, sir.

By Mr. Beall:

Q. Have you any information as to how much traffic between the key points as you suggest would move wholly by truck and not have any portion of it hauled by rail?

A. No, I don't believe I can answer that.

Mr. Beall: That is all, thank you.

Mr. Abeles: I shall have a very small amount of redirect examination.

Exam. Livingstone: I suggest you wait until the end of the cross-examination, you may have additional questions.

[fol. 1859] By Mr. Noah:

Q. On what basis was your company authorized by the Interstate Commerce Commission to operate motor vehicles?

Mr. Abeles: I object.

Exam. Livingstone: Read the question.

(Question read by the reporter.)

Exam. Livingstone: What do you mean by that?

Mr. Noah: I mean what is the authority given based upon, public convenience and necessity, for instance?

Mr. Abeles: Isn't that self evident, Mr. Examiner?

Exam. Livingstone: Yes, the applications are based on convenience and necessity.

Mr. Abeles: The law requires that.

Mr. Noah: I know that. I thought the record ought to show it in this instance.

Exam. Livingstone: There are no grandfather applications involved here.

Mr. Noah: But you have not rendered service authorized by the Commission as required by the public as between certain of your key points, have you?

The Witness: In some instances.

By Mr. Noah:

Q. In other instances, you have not?

A. Well, I meant that to be that in some instances we have not yet performed service under certain of these certificates, that is stated in the evidence.

[fol. 1860] Q. As to those operations authorized which you have not conducted, what is your reason for not giving the public that service authorized?

Mr. Abeles: I have no objection to his repeating it, but that is fully set forth in his direct testimony.

Exam. Livingstone: In order to expedite the hearing, answer the question.

The Witness: I explained, I believe, that due to the effect of some of these key station operations we had held in abeyance the inauguration of the operation pending the outcome of this hearing.

By Mr. Noah:

Q. That has been for a period in some instances of nearly two years, has it not?

A. Yes, sir.

Q. The reason for it is not also based upon the fact that you felt it not feasible to conduct such an operation with the key point, is that true?

A. Well, since the key points were established, that is true.

Q. Your proposal here is for the convenience of your company, is it not?

A. Yes, sir.

Mr. Noah: That is all, thank you, sir.

By Mr. Inglis:

Q. Mr. Arnold, let's clear up one point at the outset if we may. Your exhibit 1 shows some figures after the names of several towns located in Florida, what did you tell us [fol. 1861] was the origin of those figures?

A. That is all over the map, not only in Florida that represent the population of that town of village or point.

Q. What is your authority for the figures shown for the Florida points?

A. Well, I explained now I can't tell you for each point what it is, but I explained the figure was taken from the

1940 census figures where they were available, otherwise from the best information we could obtain.

Q. Help me on one point, if you will, please, Mr. Arnold. You show the population of Jacksonville, for instance, as 146,259. The official release of the Bureau of the Census of the Department of Commerce, showing the 1940 population figures for Jacksonville gives 173,065.

A. Well, I will accept that correction if that is the official release of the census bureau.

Q. I don't believe it is necessary to read into the record all of the discrepancies. Will you simply accept it to be true that none of the population figures shown for the state of Florida are accurate? I will give you the official release of the Department of Commerce to compute, if you wish.

A. We will adopt the official release of the Department of Commerce if that is available.

Q. It has been available for many months.

A. Possibly we didn't have a copy of it. We will adopt [fol. 1862] it as the population of any point, the official publication of the Census Bureau.

Mr. Inglis: I would like to state to the Examiner the population figures for the State of Florida have been completely disregarded, I have not found but one accurate one.

Exam. Livingstone: You in all probability used 1930.

The Witness: No, in some cases they were published by some State Bureau. One case had a publication from a company to apply that to each individual point on this map. I couldn't do it at this time.

Mr. Abeles: We will accept the official publication of the Department of Commerce as showing correctly the population of the towns included on this exhibit. The only purpose of those population figures was to show the relative importance of those places.

Exam. Livingstone: All right, sir.

The Witness: The sole purpose was to just show that.

Mr. Inglis: That the relative importance may be further brought out with the permission of the Examiner, and of the applicant, may I read some half dozen correct population figures into the record for Florida towns. Do yo objection to that?

Mr. Abeles: No, none at all except I don't think it is important enough to take the time of the hearing.

Mr. Inglis: I believe it has some bearing on it.

[fol. 1863] Mr. Abeles: I have no objection to it.

Mr. Inglis: The population for the town of Lake City, which is some sixty miles to the west of Jacksonville, is shown on the map as 4738. The official figures show it at 5836. Live Oak is shown on the map as having a population of 2995. The correct population according to the 1940 census was 3437.

Exam. Livingstone: I believe your position is clear enough as to discrepancies in population. It is a matter of public record.

Mr. Inglis: I am not attempting to discredit the map. I have something else entirely in mind. If you will allow me to pursue this for some half dozen key stations, it will help us, I believe.

Exam. Livingstone: All right, sir.

Mr. Inglis: Madison is shown on the map as having a population of 2515, and on the census figures as having a population of 2730. Monticello is shown as 2042; the figures are the same, that is the identical figure. Tallahassee is shown as 11,725 on the map; its population is 16,240. River Junction is shown as 2563 on the map; and on the census figures as 7100. Down in the Tampa-Sebring section, Tampa is shown on the map as 100,151, and in the census figures it is shown as 61580. Lake Wales at 4488; instead of the population, 5024; Sebring at 3194, as opposed to the [fol. 1864] census figure of 3155. With those figures in mind, do you again state, as you told Mr. Beall a moment ago that you had no population figure that you regarded as ideal for a key station or as ideal for a set off point for a package car.

Mr. Abeles: He didn't make any such statement.

Mr. Inglis: Allow me to ask him the question. Do you have any population for a town that you regard as ideal for a key station or for a point at which you can set off package cars?

The Witness: No, sir.

By Mr. Inglis:

Q. You have not? I believe you told Mr. Beall you had no average daily tonnage that you regarded as ideal as a point for the set off of the package car or for the establishment of a key station, is that correct?

A. That is correct.

Q. Do you have any distance that you regard as ideal between key stations?

A. No, I have not.

Q. I didn't understand exactly the restrictions to which the railroad would voluntarily submit on the Jacksonville River Junction operation known here as subs 9 and 10 consolidated. You named the point of Jacksonville, Lake City, Live Oak, Madison, Tallahassee, and Quincy as points at which the railroad now set off package cars.

A. That is from Jacksonville?

[fol. 1865] Q. Yes, from Jacksonville, and you gave some voluntary restriction to which you would submit as to those points. Would you mind explaining a little more carefully what you meant?

A. Well, I don't know just what you mean, but I stated at the present time we are operating package cars from Jacksonville to Lake City, Live Oak, Madison, Tallahassee, Quincy and River Junction, and that we were willing to continue to do that if it is desired to so restrict the operation.

Q. Well, what was the qualification that you put on your voluntary restriction, the qualification having to do with freight from Jacksonville consigned to any other point on the Sub 9 and 10 route? What did you mean by that—I simply don't understand it?

A. I mean by that at the present time the truck is handling from Jacksonville all of the traffic for these intermediate points other than the ones named—in other words, it handles all of the traffic for McClenny, Glen St. Mary, Sanderson, Olustee, Welborn, Lee, Greenville, and so on.

Q. I understand that is the present operation, but is it your idea of an appropriate restriction on the operation to allow you to continue to serve the smaller points that you have just named by truck out of Jacksonville, or is that to be served, are those points to be served by truck out of such points as Lake City, Live Oak, Madison, Tallahassee, Quincy, and River Junction.

[fol. 1866] A. They will be served by the truck out of all points—in other words, as I explained, the truck does all of the delivery at these points, and it does all of the picking up even at Lake City and Live Oak and Madison.

Q. But under restrictions you consider ideal, you would handle a shipment, I will say for Greenville—Greenville being a point lying between Madison and Monticello and

the shipment being one received at Jacksonville from your rail lines out of, say, Norfolk, you would propose to handle that less carload shipment from Jacksonville to Greenville by truck all the way from Jacksonville to Greenville, wouldn't you?

A. Yes, sir.

Q. You would not then under your proposal honor any natural or normal key stations such as Lake City, Live Oak, or Madison, that might be intermediate between Jacksonville and Greenville?

A. I don't know what you mean by honor, but all this was explained in the testimony.

Q. It wasn't too clear to me, Mr. Arnold, that is the reason I am asking you to do it over again.

Mr. Abeles: May I interpose there, Mr. Inglis, and ask the witness to explain why we would not be willing to handle a shipment from Jacksonville to one of these intermediate stations by truck, only from the nearest so-called key stations, that is what you have in mind, isn't it?

[fol. 1867] Mr. Inglis: I have in mind what he is willing to do voluntarily. I understand his reasons for not doing it, I simply want to get clear what he wants to do and what he is not willing to do, to restate a moment my last question, a shipment such as I have described would under your idea of a proper operation be handled all the way from Jacksonville to Greenville by your truck, wouldn't it?

The Witness: That is right.

By Mr. Inglis:

Q. About what time would that delivery be made in Greenville?

A. It would be made there about 12:35 a. m.

Q. About midnight, is that right?

A. Yes, sir.

Q. Go with me a little further, at about what time would a similar delivery be made at Monticello?

A. 1:25 a. m.

Q. Lloyds?

A. About 2 p. m.

Q. Perkins?

A. That would be at about 2:20.

Q. Leading back toward the east along that same route at about what time would the truck delivery be made at Glen St. Mary?

A. Well——

[fol. 1868] Mr. Abeles: Are you speaking now of the westbound movement?

Mr. Inglis: Speaking of movement from Jacksonville which is the predominant direction of the freight.

The Witness: About 8:10 p. m.

By Mr. Inglis:

Q. Molusty?

A. About 8:45 p. m.

Q. Lake City?

A. 9:35 p. m.

Q. Delivery there would be made by the truck out of Jacksonville or would that be delivered out of the package car at Lake City?

A. At Lake City, it is being made in a package car.

Q. How is the freight consigned to Lake City actually delivered?

A. Delivered in the package car.

Q. I mean do you perform a pick up and delivery service in the limits of Lake City?

A. Yes, sir.

Q. Is that done by the same truck that left Jacksonville at 7 p. m.?

A. No, sir.

Q. Give me the delivery time for the town of Lee?

A. About 11:50 p. m.

Q. Now, Mr. Arnold, earlier you discussed some towns up in the Carolina and Virginia section with which I am not [fol. 1869] entirely familiar, but there you told us that in instances where your deliveries had to be made after the normal closing time that it amounted to a 24 hour delay in the delivery time which you could eliminate by the clever use of trucks. Explain if you will whether that same situation prevails on a westbound shipment from Jacksonville bound to, say, Greenville, and if you can in fact, from a practical standpoint deliver to a merchant in Greenville at such a delivery time as you have given us a moment ago?

A. No, sir.

Q. The same situation prevails there as prevails in the Carolina territory——

A. Wait a minute, you are mixing up the delivery time to the shipper with the delivery time it is delivered to the station for delivery to the station.

Q. That is precisely the point, the time you gave me while ago was the time the truck arrives at the town?

A. That is right.

Q. The delivery is sometime the next morning when it suits the convenience of the shipper to come get the freight?

A. That is right.

Q. You do not perform a pick up and delivery service from small towns to Jacksonville or River Junction, do you?

A. I can't tell you the individual places that are covered [fol. 1870] or not covered by the pick up and delivery tariffs from my own information at the moment.

Q. Would you be glad enough to give me your approximation then recognizing the possible inaccuracy, do you pick up and delivery in Lake City, you told me a moment ago you did?

A. Yes.

Q. Do you pick up and deliver in Live Oak?

A. Yes.

Q. Do you in Madison, Madison being the border line?

A. I am not positive about Madison, but I would rather say I am sure we do.

Q. How about Tallahassee, Quincy, and River Junction?

A. Yes, sir.

Q. Your petition for modification in this case mentioned sub 10, which covers the distance from Live Oak to River Junction. My answer to the petition mentioned subs 9 and 10 together. We now have your testimony stating that that is proper to consolidate those two operations. Of the two courses you have taken, one considering them as separate in the petition of modification, and two, considering them as consolidated in your testimony, the second one is the more nearly correct one, is it not, Mr. Arnold?

Mr. Abeles: Let me inject there and explain the petition, dealt with them separately, specifically, because the operating authority was granted in two different certificates, [fol. 1871] you see.

Mr. Inglis: I appreciate that is an argument for dealing with them separately. I appreciate also the fact one had no

key stations on it and other did, you were quite content to believe the non-key points just where it was.

Mr. Abeles: I beg your pardon. I must answer that question. If Mr. Inglis would examine the key station restriction acceptances, you will notice that Jacksonville is among them whereas it is not designated in the Commission's order of January 24, 1941.

Mr. Inglis: However, as to Jacksonville you had another type of restriction which was not pleasant to the railroad either.

Mr. Abeles: Not at all, that was removed by the order of January 24, 1941.

Mr. Inglis: It was removed and the key station plan was not substituted as to the sub 9.

Mr. Abeles: That is correct. I am merely trying to explain to you that in our proposals here, we have not confined ourselves to the key stations which are designated in the order of January 25, 1941, but have volunteered the acceptance of a restriction resulting from the naming of Jacksonville as a key station, which the Commission did not do in its order, you see.

By Mr. Inglis:

Q. Mr. Arnold, assuming that the railroad is willing that [fol. 1872] Jacksonville be named as a key station and assuming whether the railroad is willing or not that the Interstate Commerce Commission will require that the other terminus of the operation, that is Live Oak is considered as a key station, which point lying between Live Oak and Jacksonville is of most importance to the Seaboard as a freight distributing point.

A. Between Live Oak and Jacksonville?

Q. Yes.

A. As a less carload freight distributing point?

Q. Yes.

A. Well, it would naturally be Lake City.

Q. Lake City is larger than all the other little points in there combined, isn't it?

A. In what respect, population, you mean?

Q. Yes.

A. Apparently so, yes.

Q. It is also more important as a freight distributing point, isn't it?

A. Less carload freight.

Q. Yes.

A. Yes.

Q. The reason you make the distinction as to less carload freight is that you have your own operation that goes through the little town of Baldwin, isn't that it, which is important to you because northbound expedited refrigerated fruit movements go through that point, is that not [fol. 1873] correct, and therefore it is important to you although not important as a freight distributing point, isn't that correct?

A. On that basis, yes.

Q. The net result of your voluntary restriction on the consolidated 9 and 10 from Jacksonville to River Junction would provide distribution point for package cars moving to the west but not toward the east, isn't that right?

A. Yes, on that, that is right on the first restriction on that route.

Q. But you would in addition like to be unrestricted on the freight for the—what point other than the larger ones we have named?

A. Moving from Jacksonville, yes.

Mr. Abeles: You mean west?

By Mr. Inglis:

Q. You say the Jacksonville-River Junction operation is wholly within the State of Florida?

A. Yes, sir.

Q. State at what points you interchange with carriers having operations that are physically across state lines, beginning, of course, with Jacksonville on the east, what is your next point going west?

Mr. Abeles: Point of interchange.

By Mr. Inglis:

Q. Interchange or transfer in some instances, they are your own lines in other instances, they are lines of other [fol. 1874] carriers?

A. At Lake City we have the Southern Railroad or the Georgia-Southern and Florida as it is known in that part of the country.

Q. You have at Baldwin your own lines coming down from the north, do you not?

A. Yes, sir.

Q. Is any freight transfer from that line coming into Baldwin to the Jacksonville River Junction Line?

A. We have no l. c. l. transfer at Baldwin.

Q. Then your first one is at Lake City, which is the Southern or the old G S & F, is that right?

A. That is right.

Q. Then you have the L O P & G at Live Oak, do you?

A. That doesn't go out of the State of Florida.

Q. That is connected with the Atlantic Coast Line, isn't it a physical connection is possible over the L O P & G, we will say?

A. Well, we have a physical connection with L. O. P. & K.

Q. Physical connection across state lines is possibly across state lines with the ACL and L O P & K?

A. Yes, sir.

Q. What is the next point?

A. At Madison we have the Georgia and Florida Railroad.

Q. The next one?

[fol. 1875] A. At Greenville we have the South Georgia Railroad.

Q. The next one is Drifton, isn't it, or Monticello?

A. Well, the interchange would be at Drifton, that is with the Atlantic Coast Line Railroad.

Q. Drifton is just out of Monticello, isn't it?

A. It is about three and a half or four miles over there. Monticello is on the branch, Drifton is on the main line. Monticello is just a little branch line.

Q. Then over further on, you have interchange point, Tallahassee, do you not?

A. Only with our own lines.

Q. But you can get interstate freight into the territory through Tallahassee, can you not?

A. Yes, sir.

Q. The same applies at Quincy, does it, the same applies from Quincy to Havanna, does it?

A. No, there is no physical connection through Quincy and Havanna to an interstate line, is that what you say about that?

Q. That is the rail connection?

A. I say there is no physical connection between the rail line from Havanna to Quincy and the main line from Tallahassee to Quincy or through Quincy to River Junction.

Q. At what point do you connect with the Appalachiacola-Northern?

[fol. 1876] A. At River Junction.

Q. You also connect with the L & N at River Junction?

A. That is right, and with the Atlantic Coast Line.

Q. Do you connect with any other line at River Junction other than the Appalachiacola-Northern, the Louisville and Nashville and Atlantic Coast Line?

A. That is all.

Q. The population is shown at River Junction of 7110 according to the 1940 census. That includes a very large population at the State Insane Asylum there, doesn't it, Mr. Arnold—in other words, River Junction is a community except for the State Insane Asylum, is a very small village, isn't that right?

A. I don't know whether that population figure includes the Insane Asylum or not. I couldn't tell you that. It seems to me there was some extension of corporate limits there a while back. Recently they have changed the name from River Junction to Chattahoochee.

(Discussion outside the record.)

By Mr. Inglis:

Q. The point is true, however, is it not, Mr. Arnold, that River Junction is not an important distributing center of itself with the exception of the State Insane Asylum?

A. No, sir.

Q. River Junction's importance in your transportation [fol. 1877] system is an interchange point with the three lines you have just mentioned, is that right?

A. Principally.

Q. Therefore, freight received by your line at River Junction consigned in the direction of Jacksonville is freight that has had in almost every instance previous interstate carriage, isn't that right?

A. I think possibly you are correct in that. Well, I am sure you are, because that is the overhead traffic coming in there from New Orleans and River Junction and places of that kind.

Q. Overhead traffic coming in from Montgomery and Birmingham there, too, does it not?

A. No, sir.

Q. Where do you get that?

A. We get that at Montgomery from Birmingham?

Q. Montgomery or Columbia?

A. That is if you can control the routing, you would get it there.

Q. You don't have any figures as to how much of that traffic received at River Junction might be delivered on the way to such point as Quincy, Tallahassee, Monticello, Madison, Live Oak, or Lake City, do you?

A. I am sorry, I haven't, as I have previously stated.

Q. Do you know, Mr. Arnold, whether your less carload traffic out of Jacksonville on the Jacksonville River June-
[fol. 1878] tion Line is predominantly westbound or eastbound?

A. Well, it is predominantly westbound.

Q. Being predominantly westbound, there is some empty space in a truck that can be used to transport less carload freight from River Junction toward Jacksonville presumably, isn't there?

A. Well, there might be empty space on the truck with any point or between any point. Your overhead traffic from Jacksonville to River Junction is handled in the package car and the same way from River Junction to Jacksonville. By Jacksonville, handling the traffic in package cars to Lake City, Live Oak, Madison, Tallahassee, Quincy, and River Junction, it may be that that traffic that is on the truck in view of the fact the truck picks up at all these points, there may be differences or it may be balanced. I couldn't answer that without some more detailed figures.

Q. Let's start that operation in the other direction and assume that you have a shipment of 100 pounds of, say, books from New Orleans to Monticello. How would that be handled?

A. It would be handled on the truck from River Junction to Monticello.

Q. You have no package cars under your present operations that are set off eastbound at Quincy, Tallahassee, Madison, Live Oak, Lake City, or Jacksonville, do you?

A. Eastbound?

Q. Eastbound?

[fol. 1879] A. No, sir.

Q. Package cars eastbound to which you had reference are package cars for Jacksonville, aren't they?

A. That is right.

Q. Rather than to any of the other points named, is that correct?

A. That is correct.

Q. You told Mr. Beall that the Seaboard operated some truck lines that are not shown as truck lines on your Exhibit 1 here?

A. Well, this exhibit 1 includes only the truck lines in this proceeding here.

Q. That is correct, but you have other truck operations in there, haven't you?

A. Yes, sir.

Q. Do you mind telling us what restrictions, if any, there are imposed on your Jacksonville-Tampa truck operation?

Mr. Abeles: Just a moment. I hesitate to object to Mr. Inglis' questions, because up to this time they have been very pertinent, I think, but I must break my silence at that point. We haven't those cases before us here.

Exam. Livingstone: That is not at issue in this application here.

Mr. Inglis: I would like to explain my reason for ask-
[fol. 1880] ing the question. Of course, it is your prerogative to rule it out or not. The purpose behind my question is to demonstrate that there are at present some rather extensive unrestricted truck operations in Florida controlled and operated by the Seaboard, that is all I expect Mr. Arnold to state. I expect the Examiner to deduce from that and the petition for modification that they would like to have them all from under restriction.

Exam. Livingtone: The objection is sustained.

Mr. Inglis: I presume you will make the same ruling, but I want to ask you about your Tampa-Tarpon Springs-Newport Richey-Brooksville truck operation. Is that operation under any present restrictions or impediment as to key stations or prior rail hauls or the like?

Mr. Abeles: Mr. Examiner, and Mr. Inglis, for your information these routes to which you are now referring, and that includes the Jacksonville-Tampa route, have not been finally acted on by the Commission, so we don't know what is going to be imposed on us.

Exam. Livingstone: It would be perfectly all right if you explain, as I believe is the case, grandfather applications

as to some of this, but I don't know exactly what is going to happen.

Mr. Abeles: That is right. In objecting, I didn't mean to keep the information from you. I just meant to keep the [fol. 1881] record straight.

(Discussion outside the record.)

By Mr. Inglis:

Q. Let's go south a minute from Tampa toward Sebring, does that operation follow State Road 79 except for the off shoot up to Winter Haven.

A. Well, it comes over some other route out of Tampa until it hit 79, if you refer to 79 as the highway from Mulberry to Lake Wales, without a Florida highway map, I couldn't answer your question specifically.

Q. I will ask you another, what does it go by way of the small towns of Brandon, Valrico, Hopewell, Mulberry, then into Bartow and Lake Wales, and thence south on state road 8, go south on state road 8 from Lake Wales, through Babson Park, Frost Proof, Avon Park to Sebring, is that the general route followed.

A. It goes from Tampa over Florida Highway 23 to intersection with U. S. 41, U. S. 41 to intersection with Florida 79.

Mr. Inglis: Let me state there on the map that is just outside the city limits of Tampa, then you are now on state road 79.

Exam. Livingstone: What is the purpose of this line of questioning?

Mr. Inglis: The purpose of this particular question is to show that operation there is the exact duplicate operation of two other truck line operations.

Exam. Livingstone: If you will read the hearing notice [fol. 1882] again, it is solely to determine whether Condition 3 as set forth in the prior report, 28 M. C. C. 5, should be modified, and if so, the extent of such modification.

Mr. Inglis: What does the Examiner understand Condition 3 to be as to this operation?

Exam. Livingstone: I am sorry, indeed. Proceed.

Mr. Abeles: I would still like to follow that inquiry, Mr. Inglis, and ask whether your questions as to the exact route followed is in connection with competitive truck service,

and if so, what bearing that may have upon the key station, which is before us here.

Exam. Livingstone: There are several respects in which the inquiry is entirely pertinent. The first is to increase understanding of what the thing is all about, which is recognized as one of the very good grounds to put testimony in, and second is the distinction between this operation and the bulk of the other subs involved in this case, and third, is to show the competitive aspects, and fourth is to show that here is an operation in excess of 200 miles without a single key station on it, and the only restriction at the present has to do with prior rail hauls which the petition for modification in an almost offhand sort of way. I think the facts are extremely pertinent here.

Mr. Abeles: I am going to object to any questions except those relating to competitive motor vehicle service.

[fol. 1883] Mr. Inglis: It is not of great importance as to whet-er Mr. Arnold testifies to other truck lines duplicating the right or some other witness does it.

Mr. Abeles: I haven't offered Mr. Arnold at all with reference to other routes as you know.

Mr. Inglis: I know you haven't. It is necessary to identify the routes so we can show that there are two truck lines duplicating it exactly.

Mr. Abeles: If you are allowed to show it.

Mr. Inglis: Which I will offer. The route goes east from Tampa by the principal highway of State road 79, through Mulberry and Bartow to Lake Wales, thence south over state road 8, through Babson Park, Frost Proof, Avon Park and Sebring, is that not a correct general description of the operation?

The Witness: It does not serve Babson Park or Frost Proof. They are not stations on our railroad, that is a general correct statement as to the road or route that the truck follows, yes, except that from Bartow, to Winter Haven, it uses U. S. No. 17 and then backs up on some county road of some kind to get back on No. 79 where it goes on to Lake Wales.

By Mr. Inglis:

Q. How do you get from Lake Wales to Avaon Park?

A. This says from Lake Wales over Florida highway 8 to Sebring.

[fol. 1884] Q. You serve all immediate points?

A. We serve Avon Park and Sebring.

Q. Do you serve the other immediate points?

A. I just told you we do not serve Babson Park and Frost Proof because they are not on our railroad.

Q. You do not serve any point on State road 8 south of Lake Wales except Avon Park and Sebring. I mean by truck, of course.

A. Yes, we are speaking of trucks. No. We serve Avon Park and Sebring with the truck.

Q. Is there a closed door restriction on your operation from Lake Wales to Avon Park?

Mr. Abeles: You are speaking of interstate now?

Mr. Inglis: Yes.

The Witness: There are the restrictions that we can not serve a station not on our railroad. That is condition one or two. I don't recall which of the order.

By Mr. Abeles:

Q. Neither Frost Proof nor Babson Park are on the Seaboard Railroad, by which we mean rail line.

A. That is true.

Q. Between Sebring and Tampa by the route you actually follow, which are the important distributing points, if you include Lake Wales, Winter Haven, Bartow, Mulberry and Avon Park. Do you distribute in each of those communities?

A. I don't get you. We deliver freight to each of those [fol. 1885] communities. I don't know exactly what you mean by do we distribute.

Q. How do you make those deliveries?

A. We put them in our stations by the line haul truck.

Q. Do you then offer pick up and delivery from the station out to the consignee's place of business in those places?

A. Yes, sir.

Q. That is done by contract?

A. Yes, sir.

Q. And you do that in what points?

A. We do it in Bartow, Winter Haven, Lake Wales, Avon Park, and Sebring. I am sure it is done in Mulberry, but I couldn't be positive about it of my own knowledge right at this moment.

Q. What interstate interchange points or transfer points are there on that Tampa-Sebring route?

A. You mean with other rail line that might reach interstate points?

Q. Yes, sir. I would like to include all possibilities. What I am interested in are the ones that are actually used.

A. Actually used, I don't know just what you mean by that. I can tell you where we connect with other railroads and interchange freight with them.

Q. That is what I really want to know, let's have that.

A. We connect with the Atlantic Coast Line Railroad at [fol. 1886] Winter Haven and at Bartow and at Mulberry and Tampa. Atlantic Coast line is also at Avon Park and Sebring. That is all.

Q. Do you handle freight over that truck operation that is interchanged or transferred at all those points or does most of that freight come through Tampa?

A. Most of it comes Tampa. There wouldn't be very much of it interchanged with the Atlantic Coast line at those points, less—I mean LCL freight.

Q. You are under present restriction against interchanging interstate traffic with coastwise steamship lines at Tampa, aren't you?

A. Yes, sir.

Q. But you have no key stations on that operation?

A. None have been made.

Q. Do your reports to the Interstate Commerce Commission or to the Florida Railroad Commission show separately the tonnage and revenues of the rail and truck operations at the present?

Mr. Abeles: I object to the Florida Railroad Commission at the present. If you confine your question to the Interstate Commerce Commission, that is all right.

Mr. Inglis: I am interested as to the form as to both. Perhaps the Examiner will let me ask him if he filed such reports. I still want to know.

Exam. Livingstone: You may answer.

The Witness: I believe I have stated we do not report [fol. 1887] the revenues separately. Mr. Beall has called attention to a report that is made, an account report that shows the tonnage handled by truck.

By Mr. Inglis:

Q. You have to file report showing the miles traveled for mileage tax purposes in Florida, too, don't you?

A. I think so.

A. Yes, sir.

Q. Mr. Arnold, who determines whether you are going to operate a package car to a particular point or not?

A. Well, sometimes that is something that may happen from day to day for a regular car, but when a regular set up is put in, that is done by conference between the traffic and the operating departments and determined under all conditions that may be involved in the individual place or situation.

Q. Is it not a matter within the management or the managerial discretion of the railroad?

A. Yes.

Q. It is also within the discretion of the railroads management as to cars loaded daily for Live Oak, for example, would contain freight for a point beyond Live Oak, such as Falmouth or Falmouth Springs, wouldn't it?

A. I don't believe Falmouth Springs is on our lines. Falmouth itself is a non-agency point, but as I undertand your question, it was managerial discretion as to how freight would be handled to Falmouth, is that what your [fols. 1887a-1888] question is?

Q. My point is it is within the discretion of the management as to whether freight for points beyond points to which you now operate package cars is in fact included in the same package car or handled by some separate conveyance—in other words, the management of the railroad determines what vehicle will carry a particular shipment, that is true, isn't it, obviously so?

A. Why sure.

Q. It is also true that the management of the railroad determines the closing time for the warehouses in Jacksonville and in Tampa, isn't it?

A. Can't we shorten it up a bit by saying it is in managerial discretion to determine any fact of operation, closing time, closing trains or any other feature or matter?

Q. I will be glad to have you state that, yes, which is another way of saying the net result of your application here, since you hinge the question of whether or not there will be key stations on your manner of operation, you end

up with the contention that you shouldn't have key stations except where in the managerial discretion they are desired, isn't that right?

A. That is what we would like to have very much, yes.

Q. That is what your testimony says. I think that is all.

Exam. Livingstone: We will adjourn at this time until 9:30 tomorrow morning.

(At 5 o'clock, p. m., November 12, 1941, hearing adjourned to 9:30 a. m., November 13, 1941.)

[fols. 1889-1890] Before the Interstate Commerce Commission

Docket Nos. MC 86687 and MC 86687 Subs 1 to 10, 15, 18 and 19

SEABOARD AIR LINE RAILWAY

(Legh R. Powell, Jr., and Henry W. Anderson, Receivers)

Raleigh, North Carolina, November 13, 1941, 9:30 a. m.

Before V. J. Livingstone, Examiner

Appearances: As heretofore noted.

[fol. 1891] Proceedings

Exam. Livingstone: Are protestants ready now?

Mr. Smiley: Yes.

Mr. Inglis: I have a question or two more but suppose Mr. Smiley goes ahead.

Exam. Livingstone: All right.

Mr. Smiley: Mr. Examiner, before beginning any cross-examination, I want to state my position, and that is that an investigation ordered to determine whether or not the key point restrictions should be modified must logically and of necessity take into consideration the possible and probable effects of any such modification. It is for the Commission to determine whether or not the proposed modifications will materially affect or change the premises or conditions under which the original orders were granted. If after investigation the Commission finds that the modifica-

tion will not materially affect or change the proposed fundamental conditions, then it will not be difficult to determine to what extent my cross-examination will be directed to determine the fact of the modifications.

Exam. Livingstone: Was there a further appearance this morning?

Mr. Koonce: I believe R. C. Atwood put in an appearance for the Motor Transit Company yesterday and it will not be necessary for me to put in my appearance.

[fol. 1892] Mr. Abeles: Had you finished?

Mr. Smiley: Yes, with one exception. I would like to know, in order that my cross-examination stays strictly in line with what has gone on before; as I understand it, the original case on the sub numbers here under consideration were all originally certified convenience and necessity cases, that the original orders on all cases came out July 11, 1939, and on appeal by the applicant there were modifications made in the original orders on January 24, 1941. Is that correct, Mr. Abeles?

Mr. Abeles: That is correct.

Exam. Livingstone: That is correct.

Mr. Smiley: Then, I would like to know this, and either Witness Arnold or counsel may answer, in appearing in the original cases, did you propose to operate a truck service coordinated with an auxiliary or supplement to the rail service through the use of break-bulk or key points to and from which you would operate both package cars and highway equipment?

Mr. Abeles: No, the break-bulk or key points was never injected in these cases until the order and report of January 24, 1941. In the original cases there was no mention made—on some of the routes, but not all—of the purpose to utilize key points as the distribution origins of the truck service, [fol. 1893] but that was only a few instances and there was no commitment at that time that the proposed truck service could or should be used only in connection with so-called break-bulk points. Does that answer your question?

Mr. Smiley: Well, yes and no. I was attempting to determine where, from what record, the Commission got the list of points which are shown in red on your Exhibit No. 1, which apparently they have placed as key points, in the order of January 24, 1941.

Mr. Abeles: I don't get the import of your question, only on the original application, and it is quite evident, I think,

from the key points designated in the order of January 24, 1941, that they were to a certain extent selected arbitrarily, because the records in the original cases were wholly inadequate to determine a proper selection of key points, because at that time, at the time the hearings were held, the key points had not been formulated, and consequently the evidence was not directed to that plan.

Mr. Smiley: Even though the record was not directed to that plan, is it a fair assumption that the points so selected were, in a greater part at least, used by your witnesses to show the points at which there would be some connection with the rail service whereby to accomplish the auxiliary and supplementary service you wanted to start?

Mr. Abeles: I should say no, largely no. That is why [fol. 1894] I say to a very large extent the selection of the key points in the order of January, 1941, was of necessity arbitrary because there was no record on which they could be made. I will add that, without intending any criticism of the Commission because it did the best it could with the record before it.

Mr. Smiley: After having received the orders of the Commission, then, authorizing these certificates for the routes that you have shown on Exhibit 1, then, as I understand it, the applicant went to the Commission for the purpose of eliminating that restriction which required subsequent or prior rail service in the handling of the traffic?

Mr. Abeles: That is correct. That petition was filed April 28, 1941.

Mr. Smiley: Then, as a result of that petition, hearing and argument before the Commission the key point restrictions now named in restriction 3——

Mr. Abeles: I beg your pardon, that original petition was not filed April 28, 1941. I haven't got the date of it.

Mr. Smiley: That is immaterial. Will you read the question, please.

(Question read by the Reporter.)

Mr. Smiley: Were applied against your certificate?

Mr. Abeles: That is correct.

Mr. Smiley: And it is the elimination of at least a part [fol. 1895] of those key points which you seek in this proceeding?

Mr. Abeles: That is correct.

Mr. Inglis: May I interpose this suggestion here, Mr. Examiner, that, Mr. Abeles, what Mr. Smiley and you have discussed is generally true of these truck operating rights, but does not apply in the case on the Jacksonville-Live Oak, or Supplement 9 segment, nor in a case of the Tampa-Sebring, Supplement 19, section, in either of those key stations, do they?

Mr. Abeles: That is correct in the order, but they were covered in the order of January, 1941.

Mr. Inglis: But not by your petition for modification?

Mr. Abeles: No, that is correct.

Mr. Smiley: May I inquire whether or not the interstate routes shown on exhibit No. 1 are identical with any intrastate routes which you may have? I am not interested in the intrastate angle; I just want to know whether or not, for example, in the Hermitage, Virginia, and the Virginia-North Carolina state line, if you have intrastate rights there duplicating the routes that are used for your interstate service.

Mr. Abeles: In most cases we have intrastate rights corresponding to the interstate routes, I will answer that.

Mr. Smiley: As far as Virginia, — Carolina and South Carolina are concerned, on your Exhibit No. 1, can you point [fol. 1896] out there any interstate routes that do not have intrastate routes?

Mr. Abeles: Unless you can explain why you want to know that or what relevance it has—I think we will probably take up a lot of time unnecessarily.

Mr. Smiley: The need for it will show a little later; we won't press it at the moment. Now, Mr. Arnold——

Mr. Abeles: May I interrupt. I would like to find out whom you represent.

Mr. Smiley: I represent a group of carriers, motor carriers, in the Mississippi Valley area. Do you want their individual names?

Mr. Abeles: How many are there?

(Discussion outside the record.)

Mr. Smiley: Campbell Sixty Six Express, Inc., Powell Brothers Trucking Line, Inc.,——

Mr. Abeles: When you state the names of the carriers can you give us the territory they serve?

Mr. Smiley: Yes. Going back to Campbell Sixty Six Express, Inc., Chicago to St. Louis to Joplin, Missouri

and Ft. Smith, Arkansas; Powell Brothers Truck Lines covers practically the same territory, plus operations to Oklahoma City, Oklahoma, and Little Rock, Arkansas; Highway Express, Inc., St. Louis, Missouri, to Memphis, Tennessee, and Memphis, Tennessee, to Little Rock, Arkan-
[fol. 1897] sas; Gordon's Transport, Inc., Chicago via St. Louis, Memphis to New Orleans, from Oklahoma City via Little Rock, Memphis to Birmingham; Potashnick Local Truck System, Inc., that is to St. Louis, Little Rock, St. Louis, Memphis, serving southeast Missouri and northeast Arkansas and western Illinois.

Mr. Abeles: All of them, apparently, serve this same general territory, all of your clients—is that correct?

Mr. Smiley: Generally in the Mississippi Valley, that is right.

Mr. Abeles: And none of them serve any of the territory which is directly involved in these particular proceedings. That is, you don't operate in Virginia, South Carolina, North Carolina, Florida or Georgia?

Mr. Smiley: Gordon's Transports would interchange with carriers at Birmingham.

Mr. Abeles: I am not speaking of interchange.

Mr. Smiley: Direct competition, no, sir.

Mr. Abeles: Mr. Examiner, I fail to see that Mr. Smiley's clients have any such interest in this proceeding as would entitle him to intervene. Of course, it is true, perhaps, that where interstate business by motor carriers is involved, every part of the country may be interested in every other part of the country because of the wide movement of traffic involved, but it seems to me there must be something more direct and more substantial than merely the interest of
[fol. 1898] a connecting carrier, and in these cases a rather remote connecting carrier, with the operation which is under consideration. If the Commission is going to throw all these hearings open to intervention on the theory that Mr. Smiley is appearing on, every carrier in the country could appear and make his representation.

I should say, perhaps, at this point I have raised this same objection heretofore and failed to get any ruling either from the Examiner of the Commissioner, and I should like to ask the Examiner to take a position directly on that point.

Exam. Livingstone: Yes, Mr. Smiley will be permitted to continue as an intervener.

Mr. Abeles: May I ask the Examiner to hold his ruling in abeyance until through cross-examination the interest of his clients may or may not appear?

Exam. Livingstone: You are interested in the principle of this case, are you not? As a precedent?

Mr. Smiley: We see it as a part of a nation-wide effort on the part of the railroads to get into the all-out trucking business and we are engaged today—the carriers I have mentioned—in litigation before the Commission involving the very same fundamentals as are involved in this case. I might say the American Trucking Association, which represents our industry as a whole, is here and they have been [fol. 1899] permitted to take part in this case. In my case I represent some actual carriers that are a part of the industry which Mr. Beall represents.

Exam. Livingstone: You may proceed.

Mr. Inglis: May I say a word. One of the points involved in these proceedings, as we see it, is the matter of competition and restraints on competition. That is the matter which the Commission should carefully consider in modifying restrictions on certificates. Here is a case where railroads got a right and didn't operate them in part, yet other railroads may or may not in this particular locality be conducting similar operations; but in other parts of the country we do have railroad operations of various kinds. That is the only evidence that can be offered to show the direct, actual effect of this kind of competition, and we will have to draw, before this case is over with, on other locations to show what happens to trucks when railroads get truck rights parallelling.

Exam. Livingstone: You may proceed.

C. D. Arnold was recalled to the stand and testified further as follows:

Cross-examination (Cont.).

By Mr. Smiley:

Q. Mr. Arnold, do I understand correctly that the original motor carrier operations of the Seaboard were started in 1932, original truck operations?

[fol. 1900] Mr. Abeles: That is approximately correct.

Mr. Delaney: That is correct.

Mr. Smiley: I will take counsels' statement.

By Mr. Smiley:

Q. In the area along the routes where you have operated these truck operations, has the railroad abandoned agency stations?

Mr. Abeles: I object, Mr. Examiner.

Exam. Livingstone: What bearing does this have on this case?

Mr. Smiley: I won't press it.

By Mr. Smiley:

Q. In the operation of your truck line, am I correct in assuming that you use your railroad local agents, solicitors, perhaps various other employees in carrying on the operations of your truck line?

Mr. Abeles: I object, Mr. Examiner. That involves the traffic aspect of motor operations. I would like to make it clear at this point, unmistakably clear, that while the Examiner has been, I think, quite liberal in permitting questions of witnesses which have, if any, a most remote materiality, I have reached the point now where I am going to persist in objections to questions which don't have immediate and material connection with the only issues before the Commission in this proceeding, namely, the extent, if at all, to which Condition 3 in the order of January 24, 1941, should be modified. That question, to my mind, is [fol. 1901] so far afield that it can't conceivably have any relation——

Exam. Livingstone: What relation does that have?

Mr. Smiley: The manner in which this railroad operates the truck line.

Exam. Livingstone: We have certain key points that are named. Now, the only thing at issue in this case is the elimination or addition of additional key points.

Mr. Smiley: I don't agree with you, sir. The manner in which this company operates, whether or not key points are retained, all affects its operation.

Exam. Livingstone: That is true. What part does solicitation have?

Mr. Smiley: I want to determine, it is going to be my next question, if Mr. Abeles will let me alone there is going to be some very good evidence brought out here this morning that you won't like.

Exam. Livingstone: Go ahead.

(Question read by the Reporter.)

By Mr. Smiley:

Q. Have you a separate establishment of employees to operate your truck line or do your railroad employees also serve either mechanical, over the road, traffic, solicitation, accounting or any other function in operating the truck line?

Mr. Abeles: I am going to object to that question because again it seems to me it is so far afield it can't have the re-
[fol. 1902] motest connection with the issue.

Exam. Livingstone: Sustained.

Mr. Smiley: Note our exception.

Mr. Inglis: On that point, I think Mr. Smiley's question is so correct and goes to the simple subject of this inquiry so cogently and so basically that I want to have my exception also to that one.

Exam. Livingstone: All right, sir.

Mr. Smiley: Let's determine if we can just what sort of an applicant is here before the Commission. I will tell Mr. Abeles in advance that is the purpose of these questions.

By Mr. Smiley:

Q. Mr. Arnold, as the assistant to the general manager of your road, is it the conception of your management that you are a single common carrier using both highway and rail services inseparably, or do you conceive yourself to be an organization with two separate conditions, or entities, one of which operates as a rail carrier and the other operates as a highway carrier?

Mr. Abeles: I object on the ground that calls for a legal conclusion, which the witness is not competent to answer, on the further ground it has nothing whatsoever to do with the issues in this case.

Exam. Livingstone: Well, you may answer that, Mr. Arnold.

The Witness: I understand that this question is whether
[fol. 1903] we have an entirely separate organization to handle the truck operations.

By Mr. Smiley:

Q. As the management, do you figure you have two different types of transportation facilities under your one head or is there one common carrier organization that you can't tell apart?

Mr. Abeles: The facts are all in the record. Mr. Smiley is asking for a conclusion from those facts, which it is the function of the Commission to draw and not of the witness.

Exam. Livingstone: I fail to see what importance that has, Mr. Smiley.

Mr. Smiley: Counsel is referring to records not a part of this proceeding that we wouldn't be able to use in briefing this case, this particular hearing.

Exam. Livingstone: Do you have a copy of the final report in this case?

Mr. Smiley: No, not with me.

Exam. Livingstone: Here is one of January, 1941.

Q. Then, you are unable to state whether the rail——

Mr. Abeles: I object to that question if it is going to repeat the question he has just put, objection to which has been sustained.

Mr. Smiley: I will put it this way.

[fol. 1904] Q. Are you here as rail carrier operating a common carrier motor truck line, or not?

Mr. Abeles: I will answer that question. That is a legal conclusion. We are here as a motor carrier operating under the Motor Carrier Act of 1935.

Mr. Smiley:

Q. Are you here as a rail carrier operating as a motor carrier?

Mr. Abeles: We are here as a motor carrier operating as a motor carrier.

Mr. Smiley: I think the Examiner sees the purpose of trying to find out the status of this applicant.

Mr. Abeles: Also there has been no disposition on our part to disclaim the jurisdiction of the Commission over these operations.

Exam. Livingstone: The applicant in this case is the Seaboard Air Line Railway Company by its trustees, which would seem apparent it is the railway company.

By Mr. Smiley:

Q. Now, you had some testimony, Mr. Arnold, concerning rail interchange points. Was that testimony all-inclusive? Did you not in that testimony include all the points at which you interchanged freight with other rail carriers?

A. The question was only asked in two localities. It did not include all interchange points on the system, if that is what you mean?

[fol. 1905] Q. Let's run through them quickly. At Richmond you interchange generally with all rail lines, do you not?

A. Yes, sir.

Q. How about Petersburg? Is there any interchange at Petersburg with other rail carriers?

A. Yes, sir.

Q. How about Henderson?

A. Well, there is some little interchange there with the Southern Railroad. That is a branch line of the Southern.

Q. How about Raleigh?

A. Yes, sir.

Q. How about Apex?

A. Apex is an interchange point with the Durham and Southern Railroad.

Q. How about Sanford?

A. We have Atlantic Coast Line, Atlantic and Yadkin and the Atlantic and Western Railway.

Q. How about Southern Pines?

A. None at Southern Pines.

Q. How about Aberdeen?

A. Aberdeen and Rockfish and the Norfolk and Southern.

Q. Hamlet?

A. No other railroad.

Q. Monroe?

A. No other railroad at Monroe.

[fol. 1906] Q. Charlotte?

A. We have the Southern Railroad, the Norfolk and Southern, the Piedmont and Northern.

Q. Lincolnton?

A. The Carolina and Northwestern Railroad.

Q. Shelby?

A. The Southern Railroad.

Q. Ellenboro?

A. No other railroad there.

Q. Laurinburg?
A. Laurinburg and Southern Railroad.
Q. Maxton?
A. Atlantic Coast Line Railroad.
Q. Pembroke?
A. Atlantic Coast Line Railroad.
Q. Lumberton?
A. Virginia and Carolina Southern.
Q. Bladenboro?
A. No other railroad.
Q. Wilmington?
A. Atlantic Coast Line Railroad.
Q. It isn't necessary that you give the road, you can say yes if there is any interchange. Cheraw?
A. Yes.
Q. McBee?
[fol. 1907] A. No.
Q. Columbia?
A. Yes.
Q. Clinton?
A. Yes.
Q. Greenwood?
A. Yes.
Q. Gaston?
A. No.
Q. Swansea?
A. No.
Q. North?
A. No.
Q. Denmark?
A. Yes.
Q. Fairfax?
A. Yes.
Q. Estill?
A. No.
Q. Garnet?
A. No.
Q. Now, please refer to your Exhibit No. 1. Let's take your Sub 7 route, the route between Richmond, Virginia, and Henderson. Now, as I understand, from your testimony, do you intend and propose to retain the operation of [fol. 1908] package cars as follows: Richmond to Petersburg and Richmond to Henderson; Henderson to Petersburg and Henderson to Richmond?

A. No, not Henderson to Petersburg.

Q. You do not intend to retain one, Henderson to Petersburg?

A. No, sir.

Q. What time does your package car leave Richmond and arrive at Petersburg, the one destined for Petersburg?

A. It leaves Richmond—I believe I covered that. It would leave Richmond at 8 p. m.

Q. And arrive Petersburg when?

A. Depending upon the work that that train has to do. It would arrive there sometime during the night prior to midnight.

Q. We will put it down, then, it arrived prior to 12 midnight. What time would the package car leaving Richmond on the same train reach Henderson?

A. That train doesn't go through Henderson. That train wouldn't handle the Henderson package car.

Q. What time would the Henderson package car arrive out of Richmond?

A. About 10:45 p. m.

Q. Now, at what time do you make your local deliveries in Petersburg on traffic originating at or received by you at Richmond?

A. That would commence with the opening of the warehouse, I believe it is 8 o'clock there.

[fol. 1909] Q. Is this car from Richmond put to the warehouse on arrival?

A. No, it isn't put there until the switch engine goes on duty about 8:30.

Q. It wouldn't be available for delivery until after 8:30?

A. No.

Q. That is a situation you could change by putting your switch engine to work earlier, is it not?

A. Well, yes, you could change that in that time by putting on another engine, by putting the engine on earlier, if there are other conditions surrounding the operation at Petersburg were such as required it.

Q. I note again on your suggested restriction you state you're willing to be restricted against handling traffic between Richmond and Petersburg?

Mr. Abeles: No.

By Mr. Smiley:

Q. Traffic originating at Petersburg destined for Richmond or Richmond destined for Petersburg?

A. I said from Richmond to Petersburg proper but not traffic moving from Richmond through Petersburg to points between Petersburg and Henderson.

Q. Thence, I understand it, your manner of handling traffic that either originates at Richmond or is received there by you by interchange——

Mr. Abeles: I want to point out originating at Richmond delivered to Petersburg is intrastate, which has nothing to [fol. 1910] do with it.

Mr. Smiley: I am speaking of interstate traffic now, destined for Petersburg.

Q. You now handle that in such manner as to be satisfactory, is that right?

A. I think I would say so. I think that was stated.

Q. Now, referring to your prepared testimony, Page 4, I note that you state that this service on this particular route was designed so that you could perform certain services. What services was it that you designed this route for?

A. The distribution and picking up of l. c. l. freight between Richmond and Henderson.

Q. Now, you can handle intrastate freight anywhere you want to, can't you?

Mr. Abeles: Object.

Mr. Smiley: I want to eliminate the question of intrastate freight entirely. I am asking——

Mr. Abeles: I object to the question.

Exam. Livingstone: You may answer.

The Witness: With the exception of Richmond and Petersburg at the present time.

By Mr. Smiley:

Q. Any freight, interstate freight, that is what my question is going to be directed to, orginating at Richmond, must of necessity come to you from another carrier—is [fol. 1911] that correct?

A. Yes, sir.

Q. And if destined——

Mr. Abeles: You mean destined to this route?

Mr. Smiley: Destined to this route, of course.

The Witness: That is what I thought he meant.

By Mr. Smiley:

Q. So that any of that traffic destined to any point down to and including Henderson, that type of traffic has already had a prior rail service, has it not?

I would just as soon counsel wouldn't sit there shaking his head no.

Mr. Abeles: I want to keep the record straight. I want to say this does include a part of North Carolina.

Mr. Smiley: I will change that to any point in Virginia would have to have prior rail service.

The Witness: From Richmond in.

By Mr. Smiley:

Q. Would have to have prior rail service. We are agreed on that.

A. From any point from Richmond south.

Q. Now, any interstate freight originating at any point on the Seaboard south of Richmond destined to Richmond or points beyond must either be received from another rail carrier or be given to another rail carrier at Richmond to move beyond Virginia. Is that correct?

A. That is correct.

[fol. 1912] Mr. Abeles: That question is traffic originating in Virginia?

Mr. Smiley: Yes, interstate traffic.

The Witness: Interstate traffic originating in Virginia.

By Mr. Smiley:

Q. Therefore, as to interstate traffic as to any Virginia point on this route, that traffic under your proposed handling must have had or will receive rail service?

A. That is correct.

Q. Now, at the present time I understand that you load package cars at Henderson for Petersburg and Richmond and one for LaCrosse. I think you will find that on page 7 of your testimony.

A. I stated that regular package cars are operated on this route only from Richmond to Petersburg. Richmond to Henderson, Petersburg to Richmond, and Henderson to

Richmond. There is no package car operating from Henderson to Petersburg.

Q. Now, what is this car you load at Henderson which is set out at LaCrosse?

A. That is a car that contains shipments for distribution between LaCrosse and Petersburg.

Q. Now, under your present authority you can now handle traffic originating at Henderson, either locally or by interchange with other rail carriers, destined to points in North Carolina or to points in Virginia up to Petersburg by truck—isn't that right?

[fol. 1913] A. No.

Q. Say my question runs on the question they are operating these truck lines they have certificated authority for it they can start tomorrow if they want to with the restrictions. In view of that, any interstate freight which comes into your hand at Henderson, North Carolina destined for that point up to but not including Petersburg, you can now handle by truck? If you will observe your own Exhibit 1, Petersburg is the first key station shown north of Henderson.

Mr. Abeles: You asked first if under our present authority we could; under our present authority, the only restriction is the prior or subsequent rail haul authority. Are you speaking from the standpoint of the key station restrictions or from the standpoint of the prior or subsequent rail haul restrictions? That is all I am trying to get.

Mr. Smiley: The Examiner has just told you you can operate now under your key point order if you wanted to. Is the Examiner right or are you right?

Exam. Livingstone: Is that true?

Mr. Abeles: No, that is not true because the order of January 24, 1941, has been suspended.

Exam. Livingstone: You are operating under the prior report, the prior and subsequent rail haul?

Mr. Abeles: Yes, sir.

Mr. Smiley: Under your prior order which restricts [fol. 1914] you to prior or subsequent rail haul, can you take interstate freight from Henderson to any point on that route up to and including Richmond?

A. We could not take interstate freight from Henderson to any point on the route that had not had a prior or subsequent rail haul.

Q. Now, will you tell me what traffic originates at Henderson or what volume of traffic destined to those points in Virginia that you could not now haul under the subsequent or prior rail restrictions?

A. I haven't any data as to tonnage. That would be traffic originating at Henderson destined to these points in Virginia that we could not handle wholly by truck from Henderson to destinations in Virginia.

Q. Any freight you received there from connecting rail carriers you could handle, couldn't you?

A. Yes.

Q. Is Henderson——

A. Yes, still talking about Henderson.

Q. Is Henderson a factory town?

A. Yes, sir.

Q. What type of goods does it produce, textiles?

A. Some.

Q. What other type?

A. Well, I haven't a list of all the industries at Hender- [fol. 1915] son. They have a cotton factory. I believe they have some other types of industries that I am not in position to enumerate.

Q. Very well then. If you use your key point restrictions, as it has been ordered, with the option of using the restriction of subsequent or prior rail service you could serve every point on that route by truck any way you wanted to serve it, couldn't you?

A. Let's see if I understand the question.

Exam. Livingstone: What do you mean by that, Mr. Smiley, the option?

Mr. Smiley: I have examined every route north of the Florida line with the exception of this little space between Henderson and a few points up here at Petersburg. If this carrier had set tight on its subsequent or prior rail service it could do everything it is seeking to do now under the limitation of the key points. I am speaking of every route you show on Exhibit 1 in North Carolina and South Carolina.

Mr. Abeles: This is not the place to argue the case. That is a matter of conclusion.

Mr. Smiley: Will you answer the question.

Mr. Abeles: I would like to have it cleared up. You have not answered the Examiner's question, what you mean by

it. Do you mean if we had the election of observing either the prior or subsequent rail haul restriction or the key [fol. 1916] station restrictions set forth in this, prescribed by the order of January 24, 1941, could we carry any traffic that we wanted to on this route?

Mr. Smiley: Yes, sir, that is my question.

The Witness: Well, under the prior rail haul restriction we could not have handled any traffic from Henderson or any station intermediate to the North Carolina line——

By Mr. Smiley:

Q. Wait a minute. That is intrastate.

A. I said from Henderson or from either of these stations in North Carolina to any station in Virginia. Under the key station restriction we could not handle traffic from Henderson to Petersburg.

Q. Stop right there now, you are getting me confused.

A. I am trying to analyze it so we won't be confused, if I can.

Q. Under the prior or subsequent rail service restriction you could not handle traffic originating at Henderson or any of these points up to Petersburg or Richmond unless you received it from a rail carrier at Henderson, so under that restriction you could not handle freight between those points on that route, is that right?

A. That is not entirely right. It would be right in reference to traffic originating at Henderson up to and including Wise, that we could not handle from stations from Bracey in Virginia to and including Richmond.

[fol. 1917] Q. By the same token, a shipment, an interstate shipment, originating at Bracey or rather at Wise destined to Alberta, you wouldn't be able to handle under the subsequent or prior rail service, would you?

A. That is right.

Q. We are leaving intrastate out of this entirely. Under the key point restrictions if you used that, any type of traffic which originated at Henderson, I mean whether it locally originates there or comes to you from a connecting carrier, can be transported to any point up that route too, but not including, Petersburg—is that right?

A. No, sir.

Q. You could not?

A. No, sir.

Q. You do intend to continue to operate the car from Henderson to Richmond—is that right?

A. That is correct. But let's clear one thing there. You say couldn't. We are not now operating a car from Henderson to Petersburg. You have made that same point two or three times.

Q. I am sorry I mixed it up. Will you tell us if your purpose could be accomplished just as well by having the optional right or the elective right to use a subsequent or prior rail service restriction in connection with your present proposed key point restriction? I mean to say would [fol. 1918] you accomplish the same result that way as you would by your proposed elimination of Petersburg as a key point?

(Discussion outside the record.)

The Witness: Wouldn't that work this way, if we take the key point restriction, or the prior rail haul restriction, you mean with the option to apply either one as we would like—is that what you mean?

Mr. Smiley: Yes, sir, leave your key point restriction the way it is, have the optional right to handle the traffic if it had subsequent or prior rail service, wouldn't you accomplish the same thing as you are seeking now, wouldn't you accomplish the same thing.

The Witness: No, I don't think it would.

By Mr. Smiley:

Q. Explain to us why you could not.

A. Here is one illustration, a shipment originating at Richmond destined to Norlina, Ridgeway or Manson, under the rail haul restriction we would not be able to handle it. And under the key station restriction as now set up we would not be able to handle it through Petersburg.

Q. Now, I understand that you now set your car out at Alberta rather than at Petersburg?

A. That is right.

Q. Now, couldn't you use Alberta as your key point instead of Petersburg and accomplish the result you wish to accomplish?

A. We said that in the testimony. But we also made the [fol. 1919] point that that will involve additional handling, additional transfer, and an operation of a car that would not otherwise be necessary.

Q. Then, let's get it down to this. Is what you want an all-out truck service from Richmond to Henderson?

A. We stated that we would not object to a restriction on the handling of traffic from Richmond to or through Henderson.

Q. What you want is the privilege of giving all-out truck service from Richmond to any point down as far as Henderson on this route?

A. Not to Henderson, but the first station north of Henderson, excluding Petersburg.

Q. And if that traffic originates locally at Richmond it would have to be destined to Wise, Norlina, Ridgeway, Manson or Greystone before the imposition of these two optional restrictions would hurt you?

A. That is right.

Q. How big are those points you have shown there? You show Wise as 1226, Norlina as 794. Are the others almost too small to list the population for.

A. They are not large localities. They are about the size of Norlina, but they receive l. c. l. freight from Richmond that must be back-hauled from Henderson and requires the use of a peddler car that would not otherwise be required.

[fol. 1920] Q. Have you any experience to indicate whether or not it is more economical to run a road haul truck 115 miles from Richmond to Henderson and attempt to make deliveries en route than it is to drop off a car at a point midway and work a truck both directions on that route?

Mr. Abeles: I object, Mr. Examiner. That has nothing to do with the operational feasibility of the key station plan or whether that plan should be modified or restricted. That was all covered in the original hearings on the question of public convenience and necessity.

Mr. Smiley: Mr. Examiner, unless this applicant can show that it has tested the Commission's order and has found that it cannot economically operate that route except as a through route——

Exam. Livingstone: You may answer if you know, Mr. Arnold.

The Witness: I have not the figures to explain it. In other words, I have no figures where I could give you a comparison of the cost of the operation of this truck with

the cost of handling these various cars and delaying the local trains in setting off and picking up l. c. l. freight.

By Mr. Smiley:

Q. You presently operate a turck, as I understand it, from Petersburg as far south as Bracey?

A. That is right.

Q. Can you give us a reason why you don't operate that [fol. 1921] truck on down into Carolina?

A. I think that has been stated that we have simply held it in abeyance pending the outcome of this proceeding.

Q. Would there be any difference in the restrictions that would lie against you if you went on down to Wise, North Carolina? You say you are now operating under the subsequent or prior rail service restriction. If that is the case why can't you go on down to Wise, Manson, Greystone and Henderson?

A. There is no reason that I know of physically why we could not.

Q. There is no legal reason you know of either, is there?

A. None that I know of.

Q. Let's take your route Anderson to Raleigh. That is your Sub No. 2. I understand you were not operating this route?

A. That is correct.

Q. Are the schedules which you have spoken of in your testimony, the schedules which you proposed in the original hearing?

A. I think they are, or are approximately the same.

Q. Can we say they are substantially the same?

A. Substantially the same.

Q. Any freight that originates at and destined to a point in North Carolina, of course, would be intrastate, of course, and we are not concerned with that. I understand you [fol. 1922] now run a package car Raleigh to Henderson and one Henderson to Raleigh—is that right?

A. We run one Raleigh to Henderson, not regularly from Henderson to Raleigh.

Q. Why don't you have a regular car from Henderson to Raleigh?

A. That depends on the loading and the days operation of the local.

Q. Well, you said that Raleigh is an interchange point with other rail carriers?

A. That is correct.

Q. Then the amount of interstate freight and intrastate freight that originates at Henderson destined for Raleigh is not sufficient to run that car regularly—is that correct?

A. How was that?

Q. The interstate freight originating at Henderson and the intrastate freight destined to Raleigh are not great enough to warrant loading a regular package car?

A. That is correct.

Q. Now, are you familiar with the method of operation proposed to operate—proposed by the Seaboard when it asked the Commission to grant the authority over this route in Sub 2, can you tell us how you propose to operate that route?

A. Well, I think the proposal to operate that route is the same we are talking about now.

[fol. 1923] Q. Were you going to have a setout at Henderson, one at Raleigh, then the truck make the distribution up and down the highway?

A. From points beyond those points from Richmond to Henderson from Portsmouth to Henderson, Hamlet to Raleigh, possibly also from Richmond and Portsmouth to Raleigh?

Q. Let's get back to my question. You were going to have a method of assimilating the freight at Raleigh and Henderson from various points?

A. Assimilating the freight at Raleigh and Henderson from various points beyond those points then distributing it up and down the highway by truck, yes, distributing and picking up.

(A short recess was taken.)

By Mr. Smiley:

Q. Will you point out to me, Mr. Arnold, what traffic you would not be able to handle on this route between Raleigh and Henderson if you had the optional right of using the subsequent or prior rail haul restriction?

A. If a shipment originated at Bracey or LaCrosse, say, destined to Raleigh, we could not handle it under the prior rail haul restriction. Nor could we handle it through Henderson with the key station restriction as now specified.

Q. In your testimony, though, concerning Sub 7 which is the Richmond-Henderson route, you propose to retain Henderson as a key point?

[fol. 1924] A. With respect to traffic from Richmond.

Q. Then, do we understand that you do not intend that the Commission retain Henderson as a key point except as to traffic originating at Richmond?

A. Or originating at Henderson destined to Richmond or beyond.

Q. But as to traffic moving south of Henderson to any point on these routes, we are to interpret your testimony, then, as meaning you want all those key points eliminated—is that right?

A. No, we were talking about—we haven't got south of Henderson yet.

Q. Yes, we are, we are on the Henderson-Raleigh route now.

A. Any traffic originating south of Henderson going this way is affected by something else. What he is talking about now, we are going to originate traffic at Henderson or take it to any point south on these routes. I said that is not the intention.

Q. If you had the optional right to use the prior or subsequent rail service restriction you would not be able to take a shipment originating at LaCrosse or Bracey destined for a point beyond Henderson?

A. No, I said to Raleigh.

Q. That would be a point beyond Henderson, would it not?

A. That is one point beyond Henderson.

[fol. 1925] Q. Under the subsequent or prior rail service restriction?

A. I said if it was destined to Raleigh. Now, I will explain that. We asked that we be allowed to move traffic from or through Henderson to Raleigh by truck for the purpose of eliminating some package and peddler cars, and if Henderson is retained as a key point with reference to Raleigh, why, then we would have a peddler car in there somewhere to handle the shipment that might originate at LaCrosse or Bracey destined to Raleigh.

Q. Then the purpose of your testimony is to eliminate Henderson and Raleigh entirely as key points?

A. With respect one with the other, eliminate them as to key points with respect to each other. Henderson is a key

point for any traffic, for any traffic originating south of Henderson destined to Richmond or beyond.

Q. Let's see. Under your key point restriction, you would be able to take a shipment from LaCrosse or Bracey destined to Washington or east, wouldn't you?

A. We would.

Q. Then, you desire the elimination of Henderson as a key point so that you can give an all-out truck service from Richmond clear down to, but not including, Raleigh and are willing to be restricted as to traffic moving to Henderson proper?

A. No.

[fol. 1926] Q. No?

A. We specifically said from Richmond to or through Henderson. In other words, we would not handle traffic from Richmond to any point south of Henderson hauling by truck under this restriction.

Q. That traffic would have a prior or subsequent haul on your train going toward Henderson?

A. Not necessarily. You are talking about the key station restriction. You are not talking about the rail haul restriction. You asked if I wanted to operate an all-out truck service from Richmond all the way south of Henderson?

Q. Yes. What did you answer?

A. I said no, that under the restriction as proposed that we would not handle from Richmond through Henderson. In other words, it would have to move by a package car from Richmond to Henderson.

Q. Very well, that traffic going to Henderson locally or beyond Henderson would have received a prior rail service in your own package car?

A. Yes, under that, going back to the rail haul restriction from Richmond to Henderson, yes.

Q. I am not asking about the rail haul restriction. I am trying to find out how you are going to handle that freight to points south of Henderson.

A. It has been clearly stated all the way through the case [fol. 1927] as far as I know.

Q. How, then, traffic originating at Raleigh either by interchange with other rail carriers—strike that. Interstate traffic received at Raleigh destined to a point in North Carolina would be handled how, under your proposed restriction?

A. From Raleigh destined to where?

Q. Any of these points up those routes up as far as Wise.

A. In that direction, from Raleigh to Wise, we would handle by truck.

Q. That traffic, if it is interstate, when it originates at Raleigh you must have received by or from another rail carrier?

A. Well, it could have been received from my own line from somewhere in South Carolina.

Q. That would still have the prior rail service, wouldn't it?

A. That is right.

Q. Now, then, traffic originating south of Raleigh to and including Hamlet, that is interstate traffic, would have to originate either on your own rail line and receive rail service or be received from other rail carriers, wouldn't it?

A. You didn't finish up here with this Raleigh to——

Q. I will get back to that, if you will allow me to ask the question.

[fol. 1928] Mr. Abeles: Had you finished the answer?

The Witness: I was anticipating another question. I was going to explain something.

Mr. Smiley: I will get back to it.

(Question read by the Reporter.)

The Witness: From stations south of Raleigh moving——

Mr. Smiley: North.

The Witness: North—not necessarily.

By Mr. Smiley:

Q. In what instance would it not receive prior rail service?

A. If we had a shipment originating, say, at New Hill, destined to LaCrosse, Virginia, it would not have received prior rail haul.

Q. Where is New Hill?

A. — Just south of Apex or, say, Cary, the first station south of Raleigh.

Q. Under your proposed restriction, I believe you stated you were willing to have a restriction against handling shipments from Hamlet to or through Raleigh?

A. That is right.

Q. Now, when you say through Raleigh you mean to points beyond Raleigh—is that correct?

A. From Hamlet.

Q. Do you mean shipments that arrive by rail at Hamlet, or having local origin at Hamlet?

[fol. 1929] A. It doesn't make any difference if you restrict it.

Q. Then, you include both types of shipments?

A. All freight originating in Hamlet, or points southwest or east destined to Raleigh or beyond would be restricted by truck handling.

Q. All these points that have been set up as key points on this route Raleigh and Hamlet, will you call off those which are interchange points with other railroads?

A. Apex, Sanford, and Aberdeen. At Cameron there is a short line railroad comes in there from Carthage, North Carolina, seven or eight miles over there.

Q. Have you any idea why or what it was you proposed to do with this truck service at Southern Pines that caused the Commission to name it as a key point?

A. No, of my knowledge, I can't answer that. I don't know.

(Discussion outside the record.)

By Mr. Smiley:

Q. Is this route operated?

A. Hamlet to Raleigh?

Q. Hamlet to Raleigh.

A. No, sir.

Q. I believe you stated in your testimony that at the present time you were running package cars from Charlotte to Hamlet, from Raleigh to Apex, Sanford, and Aberdeen, from Hamlet to Aberdeen and Sanford and from Sanford to Raleigh, Hamlet and Pittsboro. Are there any [fol. 1930] other package cars that you run to or from points on that route?

A. Well, we run to points on that route from Richmond and Portsmouth, to Sanford and Aberdeen. This car from Sanford to Pittsboro is not exclusively a Sanford to Pittsboro car. That has freight in it that the local puts off at Colon and Moncure.

Q. This is your case Sub 4 that we are dealing with. Do you recall what proposal as to how you would operate trucks was made to the Commission in that case, how it would be coordinated with your rail service?

A. I would have to be allowed to review the record here in the original case to answer that question.

Q. Is it safe to assume that you explained the thing thoroughly and made as good a case as you could in seeking this truck service on that route?

A. I presume so.

Q. Do you recall whether or not you had any public witnesses in connection with that route?

A. I was not present at that hearing.

Q. You don't know whether or not you had any public witnesses?

A. No.

Mr. Smiley: Would counsel be willing to tell us whether or not there were any public witnesses at that hearing?

Mr. Abeles: Just a moment, if I can. You are speaking [fol. 1931] of Sub No. 4?

Mr. Smiley: Yes, sir.

Mr. Abeles: I haven't the information here now. I can probably find out for you after searching through the transcript. I don't see that any purpose could be served by answering that question.

Mr. Smiley: As a result of hearing on this Sub 4 and listening to your proof, the Commission originally gave you a restriction to subsequent and prior rail service and on appeal then the Commission after re-examining your proof has proposed to put in these key point restrictions—is that a fair statement of the situation?

The Witness: I think so.

By Mr. Smiley:

Q. Now, other than your own statement as a representative of the rail carrier, have you come to this case prepared to show any further public convenience and which would require a complete change of the Commission's former findings?

A. I didn't come to discuss the question of public convenience and necessity because that question wasn't in this notice of hearing.

Q. You didn't bring any other witnesses for the same purpose, either, did you?

Mr. Abeles: You mean from the standpoint of shipper witnesses, Mr. Smiley?

[fol. 1932] Mr. Smiley: Yes, sir.

Mr. Abeles: No, we have not, because we don't regard that as of any consequence in connection with the issue here under consideration. That has all been thrashed out previously.

Mr. Smiley: Then, do we understand, Mr. Abeles, the applicant's position is that the Commission not only made an error in the first instance in finding that your proposal would require subsequent or prior rail service to accomplish coordination, then in the second instance finding that certain key points were necessary to accomplish the coordinated service?

Mr. Abeles: Is that our position?

Mr. Smiley: Yes.

Mr. Abeles: That is not accurately stated. If the Examiner wants me to, I will state our position, but I think it has been fully set forth in our petitions.

Mr. Smiley: And to support your request that these key points be eliminated, you think the original record and the proof offered there will amply support not only the elimination of subsequent and prior rail service, but also these key points?

Mr. Abeles: Not at all. That is what we are here for today, to offer evidence which was lacking in the original [fol. 1933] record which was made before the adoption of the key station plan, and incidentally, before the adoption of the rail haul restriction.

Mr. Smiley: This route was authorized in July, 1931, was it, in that order?

Mr. Abeles: Yes.

Mr. Smiley: Has not been operated today?

Mr. Abeles: That is right.

Mr. Delaney: I can give you the MCC record if you wish it.

Mr. Smiley: No.

By Mr. Smiley:

Q. If you institute this truck service without key point restrictions on this route, Sub 4, between Hamlet and Raleigh, will it in any way reduce the amount of switching service that you now do for the towns and industries located in that route?

A. It has nothing to do with the switching service except with respect to the package and peddler cars.

Q. Taking that route alone, Raleigh and Hamlet, will Raleigh remain as a key point with reference to that route for any other route under your proposal?

A. That proposal was from or through Hamlet to or through Raleigh to or through Hamlet.

Q. Then a shipment originating at LaCrosse, Virginia [fol. 1934] could not be handled under your proposal to a point beyond Raleigh by reason of being through Raleigh—is that correct?

A. No, it would not be handled to any point beyond Hamlet. It would be handled from LaCrosse, could be handled from LaCrosse to a point south of Raleigh.

Q. How far south?

A. Well, to the first station north of Hamlet.

Q. Then taking these first three routes——

A. You didn't let me finish there.

Q. Sorry.

A. I have explained before, the elimination of Henderson and Raleigh with respect to key points, so far as they refer to each other, was to enable the elimination of the package and peddler cars now operating between those points. Now, if we had a shipment originating at LaCrosse destined to any point south of Raleigh and could not handle it through short of Hamlet, why, somewhere in there we would have to put on a car to handle it.

Q. Then, taking these first three routes together, from Richmond down as far as Hamlet, under your proposal, you would be granted an all-out truck service between those points?

A. Only for the local shipments in there, but not for the traffic from beyond Richmond or from beyond Hamlet?

Mr. Abeles: Might I interrupt and ask Mr. Smiley what [fol. 1935] he means by an all-out truck operation?

Mr. Smiley: Yes, I will be glad to define it. I mean when the railroad takes its truck service, takes any shipment it wants to take, hauls it from its origin to destination by truck.

Mr. Abeles: You mean a movement entirely by truck without reference to a prior or subsequent haul?

Mr. Smiley: That is right, without reference to the billing whether it be truck billing or freight billing.

(Discussion outside the record.)

By Mr. Smiley:

Q. Let's take your Sub 3, which is the route from Hamlet to Columbia, and will you point out there what traffic you would not be able to handle if you had the optional subsequent or prior rail service restriction?

A. Well, under the prior or subsequent rail haul provision we would not be able to handle a shipment from Hamlet to Kollocks, which is the first station across the South Carolina line.

Q. But under the key point restriction you would be able to handle it, wouldn't you?

A. Not from Hamlet to Kollocks, but to Patrick, which is the first station south of Cheraw, we would not be able to handle it under this key station restriction.

Q. Patrick is a town of 270. I believe you said Hamlet was not a large town, it was primarily a transfer point [fol. 1936] for your railroad. Just what traffic does Hamlet originate and about how much that would be destined for Patrick, I mean local traffic, made and shipped right out of Hamlet proper?

A. It would be small in quantity.

Q. I believe you state that this route, Sub 3, and your route Sub 1, which is the operation from McBee down to Sumter are now operated—is that correct?

A. They are both in operation.

Q. And are they operated under any restrictions at the present time?

A. They are operated under the prior rail haul restrictions.

Q. Has the operation been profitable?

Mr. Abeles: I object to that question.

Exam. Livingstone: Sustained.

Mr. Smiley: What is the purpose of trying to remove a restriction if the railroad can operate profitably under it?

Mr. Abeles: I think the answer to that question is obvious. We are trying to improve the service on less carload business and the mere fact that we can give an inferior service at a profit certainly has no evidentiary bearing on whether we should be permitted to improve the service.

Mr. Smiley: You didn't come in here and testify you had an inferior service.

Exam. Livingstone: Proceed.

[fol. 1937] Mr. Smiley: Note our exception to the Examiner's ruling, as I understand it to be the Examiner's ruling that whether or not any of the operations that are now conducted by the railroad are profitable has no bearing on the matter of adding or removing or modifying the restrictions—is that correct?

Exam. Livingstone: That was the ruling in that instance.

By Mr. Smiley:

Q. There is no physical connection, is there, no physical truck connection or operation, between Columbia and Gaston, South Carolina?

A. That is correct.

Q. Let's take that route which is your original number, as I understand it, from Gaston down to Garnet. In the original case were any of these directional restrictions applied or was a restriction subsequent or prior rail service?

A. The restriction under which that is operating is the prior or subsequent rail haul restriction, if that is what you mean.

Q. I understood your original testimony to be that all of the red points shown on this map were key points with the exception of the point shown in red, Gaston to Garnet, and that they were key points in different directions.

A. No, I think I explained in my testimony that this was not a key point restriction but was a directional restriction only from Gaston or Garnet. It did not affect any [fol. 1938] intermediate point in any other way.

Q. And that restriction arose or arises in this restriction 3 of January 24, 1941—is that right?

A. This restriction shown here, yes. You will have to get the evidence on that to keep that clear. That is not as we explained a key station restriction.

Q. If it isn't a key station restriction, for what reason did the Commission make a restriction to the service of these points you have in red?

A. I have no way of telling you that.

Q. Are they specified as a restriction in restriction 3 of your proposed order?

A. In this proposed order, yes, but not as key stations. I have got that right here in the brief. This restriction

here in the order of January 24 with respect to this route reads: "No shipment shall be transported by applicant as a common carrier by motor vehicle from Gaston, South Carolina—" that is the northernmost terminus, "to Swansea, North, Denmark, Fairfax and Garnet; nor from Garnet to Estille, Fairfax, Denmark, and Gaston."

Q. It is your interpretation that that does not constitute a key point restriction?

A. No, sir, it does not permit the hauling of traffic through these named points. It only refers to the traffic that originate at Gaston or at Garnet.

[fol. 1939] Mr. Abeles: And is consigned to those named points.

The Witness: I would say we could not handle it to one of these points to load in a car to go out even if it is consigned to a point outside of the state.

By Mr. Smiley:

Q. Which of these points, please, name them, starting with Gaston, are interchange points with other rail carriers?

A. Denmark, Fairfax.

Q. Where would Gaston obtain any interstate freight to move to Swansea?

A. It would not.

Q. Where would it obtain any interstate freight to move to North?

A. Well, you have asked the question that was put in the testimony. We had a shipment that we used as an example. That was handled by truck. That originated at Gaston, was destined to Williamsburg, Pennsylvania. That was picked up by the truck at Gaston and carried to North and was loaded in a car that went north from there.

Exam. Livingstone: At this point I believe we will recess for lunch until 1:30, gentlemen. It is now a quarter to twelve.

(At 11:45 hearing adjourned to 1:30 p. m.)

Afternoon Session, 1:30

Exam. Livingstone: You may proceed, Mr. Smiley.

[fol. 1940] By Mr. Smiley:

Q. Let's take your Sub 15 route, which is Monroe-Waxhaw. I believe you stated that you now operate a truck line from Hamlet to Monroe—is that correct?

A. It is Hamlet to Monroe and Monroe to Waxhaw, the same truck.

Q. How long has that operation been in existence?

A. Part of it has been in existence for seven or eight years or more. I think it started somewhere about 1932.

Q. Now, what interstate freight that has not received prior rail handling would be received at Monroe destined to Waxhaw?

A. Well, I don't think there would be very much that didn't receive prior rail haul.

Q. Let's go to your Sub 5, which is Hamlet to Wilmington. I understand that you now operate regular package cars Hamlet to Wilmington and Wilmington to Hamlet?

A. Hamlet to Wilmington and Wilmington to Hamlet through package cars.

Q. What freight would there be received at Wilmington or received at Hamlet destined to any point in between Hamlet and Wilmington that would not have received prior rail service—interstate freight, of course, I am speaking of.

A. Well, the shipments that may have originated locally on the routes between Columbia and Sumter and Hamlet.

Q. They would have had prior rail service, would they?

[fol. 1941] A. No. Shipments originating at Columbia or a point between Columbia and Hamlet which would have moved by truck to Hamlet.

Q. Those would be the type of shipments, then, that would not have received prior rail service when destined to a point between Hamlet and Wilmington?

A. That is correct.

Q. At Wilmington an interchange point, you would say, for other rail carriers?

A. Wilmington?

Q. Yes.

A. Yes, sir.

Q. It is also an interchange point for water-borne traffic?

A. At the present time I don't think there is very much water-borne traffic coming in there of the l.c.l. classification.

Q. The package cars you now run from Hamlet to Laurinburg, Lumberton, Bladenboro and Wilmington provide a satisfactory service? I believe that is your testimony?

A. So far as those individual points are concerned. For that traffic that originates at Hamlet or—I mean accumlates at Hamlet, prior to the departure of the train at 10:45, I believe it is—no, it is 11:15 p.m. but for that traffic that comes over in the package cars from Charlotte that does not get into Hamlet until 2:40 a.m., the train service is no way to [fol. 1942] get them out of Hamlet without a 24-hour layover.

Q. That traffic which you have just described has received its prior rail service?

A. Interstate traffic would have received prior rail haul, so far as I can see. What I mean by that, interstate traffic with the exception of that from the Columbia-Sumter line.

Q. Would that freight from the Columbia-Sumter line arrive after the departure of this train from Hamlet to Wilmington under the proposed schedule you have described?

(Discussion outside the record.)

The Witness: Yes, it would get in there after the train is due to leave.

By Mr. Smiley:

Q. What time does that truck which starts at Columbia arrive at Hamlet?

A. 11:20 p.m.

Q. Is there an early truck out of Columbia? Do you have more than one schedule set up?

A. Only one schedule there.

Q. What time does it leave Columbia?

A. 7 p.m.

Q. How do you now deliver by truck for morning delivery from Columbia to points along that route?

A. By truck, you say?

Q. Yes.

[fol. 1943] A. The truck leaving Columbia at 7 p.m. delivers the freight up to Hamlet at 11:20 p.m. It covers all of that route during the early evening.

Q. There is no freight, then, accumulated at Columbia for points north of Columbia on that route, which must be dispatched early in the morning?

A. Dispatched from where?

Q. From Columbia.

A. In the early morning?

Q. Yes, sir.

A. No, sir.

Q. Now, do you make your deliveries, then, from the road haul truck at these points between Columbia and Hamlet?

A. We make deliveries to the stations.

Q. Is there any reason why that truck cannot leave Columbia early enough to arrive in Hamlet before the departure of that train for Wilmington?

A. Well, if it left any earlier it would not get all of the freight at Columbia. It would have to get into Hamlet in time to get the shipments into those package cars.

Q. How much freight would you say originates at Blaney, a town of 146 people, for any point on the Hamlet-Wilmington line?

A. I doubt if there would be very much.

Q. How about Lugoff, population 202?

[fol. 1944] A. Well, the interchange from this route to the Wilmington route, the Columbia route to the Wilmington route as between each individual station to the other individual stations would always be small, but if we are going to pick it up and put it off, we are going to have to run a car when the truck can pick it up and take it on over without the cars.

Q. If you got it into Hamlet in time, you intend to put that freight into the Laurinburg-Lumberton and Bladenboro and Wilmington cars, do you not?

A. If they would run and the shipments arrived in Hamlet in sufficient time to make the transfer to the cars before the cars had to be closed and switched to the yard.

Q. Those cars which we have mentioned are the ones which you have testified now performed a satisfactory service from Hamlet?

A. For certain traffic.

Q. Now, let's take your Sub No. 6, which is Monroe to Rutherfordton. What interstate traffic is there accumulated at either Monroe or any other point west of there on this route that has not received prior rail service?

A. Well, I don't think there would be any.

Q. Now, let's take a look at the Sub 8, which is your route between Great Falls and Greenwood. Is there any authority granted or being used to connect between Waxhaw [fol. 1945] and Great Falls or Waxhaw and Chester?

A. No, sir.

Q. What interstate freight would there be offered at any point on this Sub 8 route destined for any other point on that route which would not have received prior rail service?

A. None whatever.

Q. And if there is any freight originating on that route destined to any other point on these truck routes from South Carolina, North Carolina and Virginia, it would be necessary for you to handle it in rail service at least from Chester or Great Falls to Monroe—is that a correct statement?

A. Now, you said, as I recall, a shipment originating on the Greenwood-Great Falls route destined to any other of our routes would of necessity receive rail haul?

Q. Yes.

A. From this route to the other?

Q. Yes.

A. Yes, sir, it would.

Q. Are you familiar with restriction 1 of your proposed order?

Mr. Abeles: You are speaking of the order of January 24, 1941?

Mr. Smiley: Yes, sir.

By Mr. Smiley:

Q. Do you have that restriction in front of you now?

A. Yes.

[fol. 1946] Q. Do you have under 1 a restriction that provides that any service performed must be coordinated with and auxiliary or supplemental to the Seaboard Air Line Railway?

A. Yes, supplemental to the service of the Seaboard Air Line Railway.

Q. Will you pick out for me, please, in this group of Virginia towns shown on your Sub 7 routes, one south of Petersburg or other than a key point that you would consider to be a typical town. I think you mentioned LaCrosse while ago as being a town of which you had a shipment to some other point that the subsequent or prior rail restriction alternating with the key point restriction would still leave you in position of not being able to handle the freight by truck?

A. You might pick out either one of those as typical in that respect. I don't know just what you mean.

Q. I mean typical of your outbound traffic from those points.

A. It would be just as well to pick either McKenney, Alberta or LaCrosse, either one.

Q. Let's take the LaCrosse and assume you have an interstate shipment there destined to a point on Route Sub 2 intermediate to Henderson and Raleigh and tell us how you would handle that shipment under your proposed restrictions?

Mr. Abeles: When you say proposed restrictions,—the restrictions as we propose them or as they are set forth in [fol. 1947] the order of January 24?

Mr. Smiley: As you propose to change them.

The Witness: From LaCrosse to a station between Henderson and Raleigh?

Mr. Smiley: Yes, sir.

The Witness: We propose to handle that with the trucks.

By Mr. Smiley:

Q. Trucks all the way through?

A. Yes, sir, for this reason—it would go into Henderson in the truck sometime in the early afternoon and would move out of Henderson in a truck the following morning, which would save the operation of a peddler car either on one segment or the other, either north of Henderson or south of Henderson.

Q. Under your present key point restriction you are now authorized to move a shipment from LaCrosse to, say, Wake Forest, because in so doing you would only pass through the one key point of Henderson?

A. That is correct.

Q. And likewise you would be able to take a shipment from LaCrosse to Henderson all the way by truck?

A. That is correct, but that could not have been done under the prior rail haul restriction.

Q. Very well. Let's take another shipment originating at LaCrosse and destined to Sanford on your Sub 4 route. That is a point intermediate between Raleigh and Ham- [fol. 1948] let. How will you handle that by truck under your proposed restrictions, or will it be a combined truck and rail movement?

A. Well, it could be either one. That would move from —this is the way it would probably move. It would probably move from LaCrosse to Raleigh.

Q. By truck?

A. By truck and from Raleigh to Hamlet by car and backhaul to—what was the point you mentioned?

Q. Well, Sanford.

A. Sanford, yes.

Q. Under your proposed restriction could it be a transported by all-truck service from LaCrosse to Sanford?

A. It could be, but—wait a minute now. Let me figure this out here, how it would move. Well, there wouldn't be much difference in the time. It could move either way from LaCrosse to Sanford, by truck or by being transferred to a car somewhere then distributed by truck.

Q. Under your proposed restrictions, then, that you are suggesting to the Commission a movement from LaCrosse it could move to Sanford by all-truck service?

A. It could.

Q. Let's take a shipment moving from Lacrosse to, let's say Butters, on the route from Hamlet to Wilmington. That is your Sub 5 route. Could that move all the way by truck under your proposed restrictions?

[fol. 1949] A. No, sir.

Q. What would prevent it moving by truck all the way through?

A. The restriction against moving traffic from or through Raleigh to or through Hamlet.

Q. Your proposed restrictions in its essential characteristic combines Raleigh and Hamlet into one key point as to traffic moving beyond Hamlet—is that the way you interpret it?

A. Moving from Raleigh to or through Hamlet. The restriction would apply against any traffic moving from points north of Raleigh or Raleigh itself, through Raleigh to Hamlet for any point beyond Hamlet.

Q. Now, will you tell us in what manner a shipment moving from Lacrosse to any point down to but not including Hamlet on your Sub 2 routes would be corrdinated with your rail service as required by restriction 1?

Mr. Abeles: Object, Mr. Examiner. We haven't here before us the question of conditions 1. If he wants to relate

that question to condition 3, explain how it has any relation to condition 3, he may.

Exam. Livingstone: That is true, Mr. Smiley.

Mr. Smiley: We have an applicant here before us that has an order from the Commission which says very distinctly no matter what he does, no matter how he operates, that the service by motor vehicle to be performed by the applicant shall be limited to service which is auxiliary to or [fol. 1950] supplemental of the service of the Seaboard Air Line Railway. That would certainly be a proper question as it affects condition 1.

Exam. Livingstone: This wouldn't be the proper place, as I see it.

Mr. Smiley: If that is the manner in which the Commission intends to enforce its order here, this whole order could be pot-smutted; taking the various four restrictions, taking them one item at a time, we truckers had just as well get out of the picture.

Exam. Livingstone: As I see it, we are only involved with condition 3.

Mr. Smiley: Does it make any difference to the Commission by changing condition 3 you make it impossible to conform to any of the other restrictions?

Mr. Abeles: I don't know whether the Examiner wishes to hear from me on that question or not, but I think if I understand Mr. Smiley correctly, he is maintaining that the proposal that we now make for modification of condition 3 may affect our compliance with condition 1. Is that what you have in mind?

Mr. Smiley: That is correct.

Mr. Abeles: I think the answer to that contention is clearly this, that condition 1 simply provides that we shall [fol. 1951] operate our trucks in auxiliary or supplemental service and in authorizing us to operate the truck service in lieu of rail service in the manner in which we have shown the Commission we will operate there is a finding that that type of service is supplemental or auxiliary and that that question has been decided and is beyond the purview of this case. Now, we have before us simply the question of whether or not the service within the confines of the limits of these routes shall be operated with one kind of restriction or with another kind of restriction, not whether the type of restriction will affect the auxiliary or supplemental character of the service.

Mr. Smiley: Do I understand that counsel for the applicant is contending that there is no relationship whatever between the restrictions established by restriction 3 in the proposed order and the requirement of restriction 1, that the service performed as a motor carrier must be auxiliary to and supplemental of the rail service?

Mr. Abeles: No, I don't go that far. I agree with you that condition 3 in a sense is a means implementing condition 1. But I do not agree that any proposal that we have made here converts the service from the auxiliary or the supplemental type to any other type. Just what Mr. Smiley has in mind, I don't know, but what we are proposing to do here, namely the use of truck service for the transportation [fol. 1952] and distribution of less than carload freight, is auxiliary and supplemental to rail service, that the Commission has so found in its report and order granting the authority here and that what we are here to consider is simply whether or not certain other conditions shall apply, namely, the key station restrictions set forth in the order of September 24, 1941, or some other key station restrictions or some other form of restriction.

Mr. Smiley: Do I understand counsel for applicant takes the position that a change in the presently prescribed key points of restriction 3, which he states provides a means of implementing the restriction set out in restriction 1, would not by making such a change in any manner put restriction 3 in such condition that restriction 1 could not be implemented?

Mr. Abeles: If I understand your question rightly, I take the position that we would still have a supplemental or auxiliary service here, if all restrictions were wiped out.

Mr. Beall: Has the Examiner ruled on that matter?

Examiner Livingstone: Yes, I ruled against Mr. Smiley on that.

Mr. Beall: May I be recorded as asking for exception, as a matter of form?

Exam. Livingstone: Yes, sir.

Mr. Inglis: Let me say a word here. If I may, Mr. [fol. 1953] Examiner. The petition for modification here was received by the Interstate Commerce Commission, because it was filed pursuant to an order of January 24, 1941. That order laid down the broad general lines under which

the Seaboard could operate trucks at all, and stated, among other things, that in the circumstance there is no need of substituting truck service, and that public convenience and necessity do not require the establishment between such points, of truck service under railroad control. It allowed the railroad to demonstrate, if they could demonstrate, a key station system which would operate within the ruling laid down in January 24, 1941. That is a service which is auxiliary and supplemental to rail, not a truck service. A truck service has been ruled out. Mr. Smiley's question inquired as to the extent and degree that the new truck service would be auxiliary and supplemental to the rail service, and it is as proper a question as could possibly have been asked, with the possible exception of allowing Mr. Arnold some latitude in stating his opinion on an argumentative question; but it goes to the very root of what this hearing is all about. Because if we did not have that under consideration, the petition upon modification was not allowed even to be filed.

I think the Examiner has missed the boat, we will say. [fol. 1954] Exam. Livingstone: The purpose is to confine the hearing as much as possible to the hearing notice which specifically states solely to determine whether condition 3 as set forth in the report should be modified.

Mr. Smiley: All right, Mr. Examiner, should be modified—isn't the proposition that destroys a part of the other orders reason for not modifying it?

Mr. Inglis: That modification, if any, must follow the other order, which has already ruled on the question of full truck service and if the attempt at modification adhering closer to truck service, they then depart from the limitations of the prior order. You have to consider the questions of whether the service is auxiliary or supplemental.

Mr. Smiley: Under the proposed modifications?

Mr. Inglis: I don't think we are limited to the modification as proposed. I think, since they opened up the question of key stations, I think we can put in somewhere the railroad failed to put them before, or suggest some, and I, of course, urge the position that key stations should be put at about a half dozen towns on the Florida routes.

Exam. Livingstone: My position is the same. I don't care to go into condition 1.

Mr. Smiley: Exception to the ruling.

Mr. Abeles: I think on reading the report and order of January 24, fully supports the position that I have taken [fol. 1955] here. I won't go into it further.

By Mr. Smiley:

Q. Mr. Arnold, take a shipment beginning at LaCrosse, Virginia, and moving to a point on your Sub 6 route, the route between Rutherfordton and Monroe. How would that be handled under your proposed modification?

A. It could not be handled any farther than Raleigh under the proposed restriction, by truck. That is, prior to arriving at Monroe. After arriving at Monroe or Charlotte it could again be handled by truck.

Q. Between Raleigh and Monroe or Charlotte, it would of necessity move by rail, is that correct?

A. That is correct, or Monroe, Charlotte or Monroe.

Q. Are there any intermediate points between Hamlet and Monroe served by your truck line on that route?

A. All intermediate towns are served by that truck.

Q. What towns are those? They don't show on your map.

A. Isn't one shown on there? That was a separate hearing on that.

Mr. Abeles: You are asking this in connection with possible movement of traffic on that route and points on the Rutherfordton route?

Mr. Smiley: That or any other route, yes, sir.

Mr. Abeles: It may take Mr. Arnold some time to look up the intermediate stations. We will do it if it is of any importance.

[fol. 1956] Mr. Smiley: I have a highway map here, that will possibly indicate them. You will know whether they are on your railroad or not.

The Witness: Starting at Hamlet and going west, we have Rockingham, Lilesville, Wadesboro, Polkton, Peachland, Marshville, Wingate and Monroe.

By Mr. Smiley:

Q. Now, a shipment moving from Lacrosse to any of those points intermediate to Hamlet and Monroe on that route could only move by truck as far as Raleigh—is that correct?

A. That is correct.

Q. Then it would have to have rail service before it received further truck service?

A. That is right.

Q. Now, a shipment moving from Lacrosse to any point on your Hamlet-Columbia route.

A. Let's shorten that up. It couldn't move anywhere south or east or west of Hamlet. If it was going to any point beyond Hamlet it would have to be stopped at Raleigh, at Raleigh so far as the truck is concerned.

Mr. Abeles: He has stated that so often.

By Mr. Smiley:

Q. Then it would receive rail service?

A. That is correct.

Q. Let's go back in the reverse direction. Let's take a [fol. 1957] point south of Hamlet. Is there any point south of Hamlet on either your lines out to Rutherfordton or out to Wilmington, or down to Columbia and Sumter which could move all-truck to any point north of Raleigh?

A. No, sir.

Q. Could it move to any point between Hamlet and Raleigh, all truck?

A. Yes, sir.

Q. And that is under your proposed restrictions. If we take a typical town between Raleigh and Hamlet, what town would you choose there?

A. It doesn't make any difference——

Q. Would Lemon Springs be all right?

A. No, I would take a little bit better one than that. You can take Sanford or Aberdeen.

Q. Take Sanford. Can a shipment originating at Sanford under your proposed restrictions move to any point beyond Hamlet by all truck service?

A. Yes, sir, and the reason for that is, as I have explained in connection with the other routes, was to eliminate package and peddler cars for the local shipments that might move between these two routes across the state line.

Q. Then, for any point between Raleigh and Hamlet moving in interstate commerce to any point beyond Hamlet, under your proposed restrictions, that movement could be by all truck or truck service substituted for rail service? [fol. 1958] A. Yes, but it would stop at Columbia, be-

cause that is the end of the route, that is as far as you could handle it.

Q. In moving a shipment in that manner by all truck, in what manner would that service be coordinated with or auxiliary or supplemental to the rail service of the Seaboard Railway?

Mr. Abeles: Object to that question.

Exam. Livingstone: You may answer.

Mr. Abeles: That is the same question, Mr. Examiner.

Exam. Livingstone: Yes, I know, but I would like to clear the record on that point.

Mr. Abeles: Repeat the question.

Mr. Smiley: Read the question.

(Question read by the Reporter.)

Mr. Abeles: Before you make your final ruling on my objection to that question I should like to point out in addition to the reasons which I have heretofore stated, counsel is asking the witness a question which is tantamount to a request to define a term in the Commission's order. Now, I submit that the witness is here to testify to the facts. Now, the facts have been given fully and, I think, generously in response to the most detailed questions of Mr. Smiley. Now, whether or not it operates, in accordance with the witness's testimony, constitutes auxiliary [fol. 1959] or supplemental service is purely a conclusion of law, which is the Commission's function to determine. If Mr. Smiley wants to argue on his brief or in oral argument before the Commission that the facts as stated do not constitute a supplemental or auxiliary service, he is of course, free to do so, I submit it is an incompetent question to ask this witness. He is asking for a conclusion, which it is purely and simply.

Exam. Livingstone: I think that is true, Mr. Smiley.

Mr. Smiley: I want to ask the applicant what yardstick or measure do they use in attempting to live up to their order whereby they can advise the operating department that the service that they perform does come within the restrictions of their order.

Mr. Abeles: Now, you are asking me to hypothesize a multitudinous set of circumstances. That is utterly impossible. That is one answer to your question. The other is I submit that to the Commission, and not to you.

Mr. Smiley: Then, we understand that the Seaboard in operating its truck lines has no idea and no way of knowing whether its truck operations are auxiliary and supplemental to the rail service.

Mr. Abeles: Of course, you know that isn't so, Mr. Smiley.

[fol. 1960] Mr. Smiley: If it is not so, then tell us how you determine it is auxiliary and supplementary.

Mr. Abeles: I am not trying to conceal anything, Mr. Smiley. I think we are getting embroiled in an argument here which is more properly one to submit to the Commission rather than on the record here, but if the Examiner desires me to answer the question I can do so very briefly, although I don't think it will satisfy you. My contention is that everything we are doing in the way of handling by truck of less than carload business in the aid of efficient service on that business is auxiliary and supplemental to our rail service and the Commission has so found. Now, whether or not our privilege to handle that business as auxiliary or supplemental shall be subject to restrictions or shall be free of restrictions is a wholly independent question. The auxiliary and supplemental character of the service we are performing with or without restrictions has already been found by the Commission.

Mr. Smiley: To summarize it, I understand your position to be any truck service performed by the Seaboard Railway, regardless of the meaning or manner used is per se auxiliary and supplemental?

Mr. Abeles: I didn't say that. I don't contend that. I say what we are doing here is and has been found to be [fol. 1961] auxiliary and supplemental.

Mr. Smiley: I understand the Examiner has ruled he need not answer the question as to how this is auxiliary?

Exam. Livingstone: Yes, I will stand on that ruling.

By Mr. Smiley:

Q. As to this all-truck service from Lacrosse to certain points south and from points south of Hamlet to a point north of Hamlet, or beyond Hamlet, will you tell me how that all-truck service differs in any respect from the all-truck service of any highway common carrier that you may have?

Mr. Abeles: I object. It is asking the question in a different form.

Exam. Livingstone: Read the question.

(Question read by the Reporter.)

Exam. Livingstone: I don't understand the question.

Mr. Smiley: I will reframe it, then, so we can all get clear on it.

Exam. Livingstone: All right, sir.

By Mr. Smiley:

Q. As to shipments from Lacrosse to points up to Hamlet or the shipments from Lugoff to points beyond Hamlet, which you have stated under proposed restrictions can be handled by all truck service, will you tell me how that all truck service would differ in any respect from the all truck service of any other common carrier by motor vehicle?

[fol. 1962] Exam. Livingstone: You may answer that question?

The Witness: Well, from a practical standpoint, it would differ in that it was handled under a railroad bill of lading and railroad rates.

By Mr. Smiley:

Q. That is as to billing or rates. Now, as to the physical operation and handling of the shipment and the means of transportation, what difference would there be?

A. The difference would be that it would be received by a railroad agent and a railroad depot and moved from a railroad depot to a railroad depot and the delivery handled by a railroad agent.

Q. What mechanism would it move in?

A. It would move, if it moved all the way through in the truck, it would move in a truck.

Q. Is there any difference in that truck than what your truck competitors use as a truck?

Mr. Abeles: To shorten this, if you would like an agreement on our part, the physical movement of a shipment on our trucks and a truck of what we will call an independent motor carrier is the same, I will agree to that. I think it is so self-evident.

Mr. Smiley: Thank you. Up to now it hasn't been evident.

Mr. Abeles: I know that doesn't amount to a concession [fol. 1963] that that constitutes the not-auxiliary or supplemental service. You understand that?

By Mr. Smiley:

Q. Will you tell us what key point you propose to retain on these routes in South Carolina, North Carolina and Virginia, between which or through which you may not transport traffic, through more than one of which you may not transport traffic?

Mr. Abeles: Read the question.

(Question read by the Reporter.)

Mr. Abeles: Mr. Examiner, that has been testified to specifically already in the closing part of Mr. Arnold's testimony. If there is any real purpose that Mr. Smiley has in asking him to repeat it, I have no objection. I just want to call attention to the fact that it will be absolutely repetitious.

Mr. Smiley: Well, then, if counsel thinks that is too much trouble to reiterate those again, we understand that the witness has testified in the record previously as to the key points which the applicant proposes to retain under its proposed modification.

Mr. Abeles: That is correct. Specifically.

Exam. Livingstone: It is the same as in the petition?

Mr. Abeles: It differs slightly.

Exam. Livingstone: In what respect?

Mr. Abeles: We have accepted, I believe, restrictions [fol. 1964] in addition to those set forth in our petition and the Jacksonville-Live Oak line. We have not asked for the removal of any restrictions which in our petition we stated were unobjectionalbe.

Exam. Livingstone: All right, sir.

By Mr. Smiley:

Q. Mr. Arnold, as I understand this matter, approximately four years ago you came to this Commission and attempted and apparently did prove some sort of public convenience and necessity for the establishment of these

various truck routes, in July of 1931 the Commission passed on that proof. Am I right so far?

A. I think so.

Q. Now, some of the routes you have operated. Now, as to these routes which two years ago the Commission by its order indicated were necessary for the public convenience and necessity, which you have not operated, will you tell me what the poor public has done in the meanwhile for this truck service?

Mr. Abeles: Just a moment, Mr. Arnold has fully explained why we have held the operation of certain of these routes in abeyance. Again coming back to the purpose of this hearing——

Exam. Livingstone: The answer is that you did not feel it was feasible to operate—is that right?

Mr. Abeles: Exactly.

[fol. 1965] Exam. Livingstone: Proceed.

By Mr. Smiley:

Q. You did not feel it was feasible to operate under the restrictions as established—is that the correct way to put it?

Mr. Abeles: That is right.

Q. If the Commission does not remove these restrictions as proposed here by you, is it your intention, then to abandon those routes?

A. That would be a question to be determined after it was finally determined what restrictions the Commission will impose.

Mr. Smiley: Mr. Examiner, that is all of the cross examination. I want to get to another matter.

(Discussion outside the record.)

Exam. Livingstone. On the record.

Mr. Smiley: Mr. Examiner, at this time I would like to determine whether or not we will be allowed to put on testimony by a witness representing motor carriers in the Mississippi Valley whose testimony will run to and describe the experiences that the independent mobor carriers in that territory have when facing the competition of motor carriers subsidiary to rail carriers operating without re-

strictions. Will the Examiner allow us to put in such testimony?

Mr. Abeles: I object to the acceptance of such evidence, Mr. Examiner, on a number of grounds; principally, how-
[fol. 1966] ever, because I think it is quite obvious that the experiences of operators in the middle west with the competitive effect of motor carrier operations by railroads has no perceptible relevancy to the conditions obtaining in the territory covered by the routes involved in these cases.

Exam. Livingstone: I will rule with Mr. Abeles. However, I will be glad to entertain your testimony if it has any direct connection with the testimony here involved. That is my position.

Mr. Smiley: I would also like to state that our testimony would prove that the competition of the rail operators motor carriers is ruinous in its effect.

We make an offer to prove by competent witness that the effect upon the independent motor carriers of the Mississippi Valley of competition by rail-owned truck lines has been ruinous, particularly where the rail carriers have not been subject to any restrictions in their motor carrier operations, that we have lost and can give figures to show the loss in traffic that the rail carriers themselves in testimony long cases have shown that their all-truck service runs at least 60 per cent or greater, and that only not to exceed 40 per cent of their service is in any wise coordinated with, auxiliary to or supplemental of the rail service.

This witness by the introduction of official government
[fol. 1967] reports will show that the findings of committees of the Senate have revealed that the railroads are not adverse to using any and all methods which they can commend to restrain the competition of the independent motor carriers.

That is our offer of proof.

Exam. Livingstone: All right, sir. Do you care to make a statement, Mr. Abeles?

Mr. Abeles: Nothing I think of. First of all, those are pretty broad and sweeping statements, which, of course, Mr. Smiley was at liberty to make in the form of offers of proof. I think it is perfectly obvious for the reasons I have state- they would not be admissible here. I will also state, regardless of what he thinks he might be able to prove with respect to rail-operated motor carrier serv-

ice in the Middle West, I can show him that I could disprove any such statements in regard to any proposed here.

(Discussion outside the record.)

Mr. Smiley: We move, Mr. Examiner, that on the basis of the showing made by the applicant, the failure to serve the public convenience and necessity on authorized routes, that all routes which have not been operated under the authority granted be revoked.

Our next motion is that the applicant's plea for relief by changing the key points as specified in the proposed order be denied and that in lieu thereof the applicant be put [fol. 1968] under an additional optional restriction that where the traffic has received prior service or will receive subsequent service by rail, that it may handle freight between any points which it cannot handle under the key point restriction.

Exam. Livingstone: Your motion is on the record.

Mr. Abeles: Note my objection to the granting of those motions. That will be recorded as a matter of course?

Exam. Livingstone: Yes. We will take a short recess.

(A short recess was taken.)

Exam. Livingston: All, right, proceed.

By Mr. Mulholland:

Q. Can you give us the distances between the termini and the various routes that are involved in this case?

A. The railroad mileage on the Richmond-Henderson route is 114 miles.

Q. How about between Henderson and Raleigh?

A. The direct railroad mileage is 43, but the truck going by Louisburg makes 62 miles.

Q. Between Raleigh and Hamlet?

A. It is 98 miles by the railroad but when the truck should operate by Pittsboro it would be 132 miles.

Q. Between Wilmington and Hamlet?

A. Wilmington and Hamlet, 110 miles.

Q. Between Monroe and Rutherfordton?

[fol. 1969] A. 105 miles, but on the return trip the truck would loop into Caroleen and he would make 114 miles on that movement.

Q. Between Great Falls and Greenwood?

A. By railroad it is 74 miles from Greenwood to Chester, then there is a highway cutoff from there to Great Falls that I don't have the highway mileage. It is somewhere around possibly 16 or 20 miles. I don't have that.

Q. Does your route serve Catawba?

A. No, sir.

Q. How about the mileage on your Monroe-Waxhaw route?

A. That is 12 miles.

Q. And between Hamlet and Columbia?

A. 106 miles.

Q. Between Gaston and Garnet?

A. It is 86 miles on the railroad and the record is 96 miles. I presume that is the highway mileage.

Q. Fernandina and Jacksonville?

A. I will get that in just a moment. That is one I didn't get. About 34 miles from Jacksonville to Fernandina.

Q. Jacksonville to Live Oak?

A. I have that all the way from Jacksonville to River Junction. I can divide it.

Q. Give me that.

A. It is 85 to Live Oak. From the freight station to [fol. 1970] Live Oak it is about 85 miles.

Q. How about from Live Oak to River Junction? Give me your total.

A. Live Oak to River Junction is 127 miles by railroad, 142 by highway.

Q. It is 142 by highway from Live Oak to River Junction—is that correct?

A. Yes, sir.

Q. How about between Sebring and Tampa?

A. The railroad mileage is 85. I haven't the highway route mileage on that.

Q. Will it be substantially the same?

A. It might be some little difference, but not very many miles difference. It will be approximately the same. Maybe we can get it from Mr. Inglis.

Mr. Inglis: The way it is actually operated, you would have to add about ten or twelve miles because of going up to Winterhaven, but the direct operation over state roads 79 and 8 gives you 104 miles between the two places which, of course, is half the total mileage on the operation.

By Mr. Mulholland:

Q. Do you want to accept that?

A. Yes.

Q. What is the difference by highway between Sebring and Tampa?

A. 104 miles is the information.

[fol. 1971] Q. Why is it that in the selection of your Gaston and Garnet route you did not go into Columbia, if there is any special reason for that.

Mr. Abeles: Unless Mr. Mulholland can show some connection between the answer to that question and the modification of restriction No. 3 before us here, I don't see the connection.

Mr. Mulholland: I will go to something else then.

By Mr. Mulholland:

Q. If you had a shipment from Lacrosse to Sanford you tell us that you would have a rail haul for part of that distance—is that correct?

A. From Lacrosse to Sanford?

Q. That is right.

A. Well, I testified that it could under the proposed restrictions, it would be possible to handle it by truck, but it would probably have a rail haul in the actual movement.

Q. How would you do that?

A. Well, it would probably be loaded on a car at Raleigh to Hamlet and hauled back by truck or it might be possible there would be a car loaded at some other point to Hamlet.

Q. If it was handled entirely by truck, it would mean you would have to change it from one truck to another at Henderson and repeat that process at Raleigh, doesn't it?

A. That is correct.

[fol. 1972] Q. Are those truck schedules synchronized so that could be a through movement in point of time, or would there be layover in Henderson and Raleigh?

A. There would be a layover at Henderson.

Q. Does your Henderson truck——

A. Just a minute, let me figure this out. There would be a layover at Henderson but it would be possible to move it through Raleigh without a layover.

Q. Do you have those schedules handy?

A. Yes, sir.

Q. Let's trace that movement from LaCrosse to Sanford entirely by truck? How would it leave LaCrosse?

A. Approximately 10 a.m.

Q. Arriving at Henderson when?

A. At 12:40 p.m.

Q. Leaving Henderson when?

A. 6 a.m. the next morning.

Q. Arriving in Raleigh what time?

A. 9 a.m.

Q. Leaving Raleigh at what time?

A. 9:30 a.m.

Q. Arriving at Sanford when?

A. At 11:30 a.m. But that, as I said, that shipment would undoubtedly move from Raleigh to Hamlet in the package car and be moved by truck from Hamlet and arrive [fol. 1973] at Sanford at 6:30 a.m. instead of 11:30 a.m.

Q. Would that be true with respect to shipments originating at all points between Henderson and Richmond and destined to Sanford?

A. Well, I think they could make a better movement than that when they get up that far; you would take a shipment to Richmond and load it in a package car for Hamlet, you could get a quicker delivery that way. That is the way it would probably move.

Q. Then, what is your objection to having Raleigh named as a key point for shipments originating off from the Henderson-Raleigh route?

A. Well, that would mean that the shipment would always have to be loaded in a car at Raleigh and hauled to Hamlet. You are talking about between Raleigh and Henderson now?

Q. I said originating off from that route.

A. I don't know. You will have to clear up on that question.

Q. Take the specific question I asked before, from points between Richmond and Henderson, I understood you to say that they would probably all be handled by a setout car to Hamlet—is that right—if they were going to points between Raleigh and Hamlet?

A. By a package car from Richmond to Hamlet.

Q. My question, then, is if you aren't going to use the [fol. 1974] trucks from let's say LaCrosse to points between Raleigh and Hamlet, what is your objection to being restricted from moving over that route by truck?

A. Well, as to that individual situation there, Mr. Mulholland, there wouldn't be any particular objection except that it would require a whole lot of detailed complicated restriction and what we are trying to get out of there is simply to avoid operating these cars that are now operating between Henderson and Raleigh. That would be just a question of working out some more detailed restrictions in view of the local character of the shipments and the undoubtedly small quantities that I don't know just how they would work that out.

Q. But from a practical operating standpoint and from an economic standpoint, a restriction which permitted you to haul by truck from Raleigh to Henderson and serving the intermediate points but not permitting you to operate beyond Raleigh and shipments originating north of Henderson would not bother you—isn't that true?

A. No, it wouldn't bother particularly unless question of space on the truck or some such question as that. That would be—you simply might put it in the form of a nuisance to keep up with.

Q. Or in framing it?

A. Yes, or in framing it.

[fol. 1975] Q. Now, there seems to be an operating difficulty in putting any restriction on between Hamlet and Columbia—is that correct?

A. An operating difficulty?

Q. Yes.

A. Of this key station character here, yes, sir, or of the prior rail haul restriction.

Q. Why is that true between Hamlet and Columbia?

A. Well, I think that has been explained under the key station restriction, it would not be possible to handle shipments through Cheraw to any point south of Cheraw by the truck.

Q. That would not be true, would it, if Columbia was named as a key point and Cheraw was not included?

A. Yes, sir, because that would preclude you from handling the shipments from the package cars to Columbia that do not arrive in Hamlet until after the train has gone. That was also explained in the record.

Q. Could you tell me the points where you expect to transfer traffic from one of your trucks to another, of your own trucks on these routes—that would be true at Henderson,

wouldn't it—a shipment from LaCrosse to Wake Forest?

A. It would be transferred at Henderson.

Q. Probably that would be true, wouldn't it, in a shipment from Wake Forest to Southern Pines if you had transferred it at Raleigh?

[fol. 1976] A. Wake Forest to Southern Pines, yes, sir.

Q. And from Southern Pines to Columbia you would transfer at Hamlet—is that right?

A. That is correct.

Q. And from Lumberton to some point west of Hamlet you would transfer at Hamlet?

A. That is correct, but they are usually transferred now from car to car at the same place.

Q. When you obtained your authority to operate between Jacksonville and Live Oak, was your truck schedule the same as it is now operated?

A. I can't answer that without reviewing some records.

Q. Perhaps I can clear it up this way. Did you ask for authority to operate a truck from Jacksonville to Live Oak and return in the original application?

A. That is another one I can't answer without some refreshing of the record here.

Mr. Mulholland: Perhaps Mr. Abeles could answer that.

Mr. Abeles: I am almost sure we did. I would have to check up, but I am quite sure those schedules on the Jacksonville-River Junction line which we have treated here together were set up in our applications as separate operations between Jacksonville and Live Oak and return, and Live Oak and River Junction and return. That is my recollection.

[fol. 1977] By Mr. Mulholland:

Q. Since that time that schedule has been changed so a truck operates each day in each direction for the total distance—is that correct—from Jacksonville to River Junction?

A. I don't think that is correct, Mr. Mulholland. I am not clear just now as to why those two are separated there.

(Discussion outside the record.)

The Witness: I will tell you how it is operated now. One driver operates from Jacksonville to Live Oak. The drivers swap at Live Oak but the truck—they just swap on the truck, the truck goes through. Coming back the third driver brings

the truck back to Live Oak and it lays over there four or five hours then the man that came out of Jacksonville takes it and goes back to Jacksonville with it. It is a crude arrangement in there on account of the distance and the hours of service that makes that necessary.

Mr. Abeles: One moment, in order that my statement will not be misleading. There is nothing inconsistent or different in the manner in which these are operated now and the way they were set up in the original application. The schedules were set up from Live Oak and River Junction and from Jacksonville to Live Oak and return, and then from Live Oak to River Junction and return, although I am not sure that I believe even then we intended to carry the truck all the way through.

[fol. 1978] Mr. Inglis: Doesn't it appear rather clearly in the testimony at that hearing that that was all set up as a continuous operation for one truck although there are some apparent distinctions or inconsistencies in the two fact that two applications were filed?

Mr. Abeles: I think that is correct, Mr. Inglis.

Mr. Inglis: It has always been rather frankly one operation all the way from Jacksonville to River Junction?

Mr. Abeles: That is correct, I think; to the best of my recollection the reason they were treated as two separate applications to the Interstate Commerce Commission was that they had been in operation, I believe, in intrastate commerce, under two separate authorities and we wanted to presented them to the Commission that way. But I believe it is correct, subject to the witness' correction of this, that they have always been integrated in actual operation.

Mr. Inglis: Isn't it also true that one motor carrier competes from Jacksonville to Live Oak and another motor carrier competes from Live Oak to River Junction?

Mr. Abeles: I don't know about that, but if I did, I would object that question.

By Mr. Mulholland:

Q. Is the same condition true on any other route involved in this case where you are operating the same truck beyond the termini of the designated routes?

[fol. 1979] A. No, sir.

Q. In other words, in this case, with the exception of the Jacksonville-River Junction route no truck goes beyond the termini designated for the route—is that correct?

A. That is true.

Q. Do I understand that you will interchange at Tampa with other truck lines which you have?

A. There may be some.

Q. A shipment from Sebring to Brooksville, you could handle entirely by truck if the Tampa-Sebring route is not restricted, could you?

A. That would hardly be an interstate shipment.

Q. Where would you interchange your interstate shipments from truck to rail, at Tampa?

A. That is right.

Q. Would you pick up any interstate shipments at Sebring?

A. Well, any interstate shipments from Sebring would undoubtedly be handled from Tampa by car, any interstate shipments. It is a long way from Tampa to the first stateline.

Q. Mr. Mulholland: I think that is all I have.

By Mr. Inglis:

Q. On that Tampa-Sebring operation, the restriction, the rough parallel of present conditions, was not imposed by the order of January 24, 1941, was it?

A. I don't believe I followed you all the way through [fol. 1980] there on that.

Q. I will ask it in a simpler way. The order of January 24, 1941, did not involve the Tampa-Sebring operation, did it, sir?

A. No, that wasn't included in that order, I don't believe.

(Discussion outside the record.)

The Witness: It has been testified to here that it did not cover it.

By Mr. Inglis:

Q. The restriction that is the rough parallel to condition 3 of the order of January 24, 1941, is contained in the order of February 17, 1940, isn't it?

A. I don't remember dates, but it is the prior rail haul restriction, if that is what you mean.

Q. According to the report of February 17, 1940, that prior or subsequent rail haul restriction was placed on your Tampa-Sebring interstate operation in order to pro-

tect competing motor carriers in the territory. I believe that appears in the order. That is still correct, isn't it?

Mr. Abeles: I think the order speaks for itself.

The Witness: I will have to read the order.

By Mr. Inglis:

Q. Your petition for modification here refers to staying the effectiveness of the condition 3 stated in the order of January 24, 1941, and also refers to the Tampa-Sebring operation. Is it your construction of the order of February 17, 1940, and the order of January 24, 1941, and [fol. 1981] the petition for modification here, that you are or are not allowed to handle on your Tampa-Sebring operation shipments not having a prior or subsequent rail haul—to ask that another way, do you or do you not handle on your Tampa-Sebring operation shipments that have not had a prior or subsequent rail haul? That is, of course, interstate shipments.

A. We do not.

Q. You do not?

A. No.

Q. Is it your construction of the petition for modification here that you seek the relaxation of the condition 3 contained in the February 17, 1940, order?

A. That, I believe, the removal of the prior rail haul restriction was in another application that hasn't been ruled on, if I am not mistaken.

Mr. Abeles: Would it be satisfactory for me to answer that, because after all, that is a question of construction of the order and petition.

Mr. Inglis: I would like to hear your explanation. I might not accept it.

Mr. Abeles: You stated our position approximately correctly. The existing order with respect to the Tampa-Sebring route contains the prior and subsequent rail haul petition in our petition for modification of the order of Jan- [fol. 1982] uary 24, 1941, we explained why that route was included in the petition, namely, that the order in that case was issued, that the certificate was issued, prior to the order of January 24, 1941, and consequently prior to the time when the Commission adopted the so-called key station plan. That we assumed in view of the fact that that plan had been adopted by the Commission and was presumably to be

made generally applicable to the motor carrier operations by by or for railroads, that the prior or subsequent rail haul restriction which had been attached to the Tampa-Sebring route would be changed to the rail haul restriction and that consequently we were including the Tampa-Sebring route in our petition, with the request that no key stations be designated for that route. Is my explanation clear?

Mr. Inglis: Let me restate what you have just told me so I can be sure I do understand it. You have included the Tampa-Sebring route, which is Sub 9, in your petition for modification?

Mr. Abeles: That is correct.

Mr. Inglis: And asked that condition 3, not clearly specifying which of the two conditions might be intended, be removed, had in addition have stated that since you operated no package cars over the Tampa-Sebring operation, of course, over the Tampa-Sebring operation, there could be no question but that the operation should be [fol. 1983] entirely unrestricted?

Mr. Abeles: That is correct.

By Mr. Inglis:

Q. Let me ask you, Mr. Arnold, if it is your intention by the petition for modification and the evidence which you have brought before the Commission here today to leave the Tampa-Sebring operation entirely unrestricted as to the previous condition 3 and the order of February 17, 1940? Will you answer me on that one, "yes" or "no", please?

A. Yes, sir.

Q. Is it your intention further, by the petition for modification here to leave the Tampa-Sebring operation completely without key stations?

A. Yes, sir.

Q. What protection do you intend to give the Hunt Truck Line and St. John River Line Company, your direct competitors on interstate water-borne freight through the port of Tampa going on this Tampa-Sebring operation? Do you propose any protection for those competitors which were protected by the provisions of the order of February 17, 1940?

A. The fact that I believe that is covered in the application to modify the original rail haul restriction, because of

the fact that it prevented the handling by truck of water-borne traffic.

Q. You have still additional applications to remove, con-
[fol. 1984] dition 3 stated in the order of February 17, 1940, is that true?

A. February 17, 1940——

Q. That was the order which stated that the competing motor carriers were entitled to protection on the Tampa-Sebring operation, therefore you should not be entitled to handle the water-borne freight through the port of Tampa. Do you still have another application other than the one presently being heard which seeks the removal of condition 3 in the order of February 17, 1940?

A. I don't know.

Mr. Abeles: February 17, 1940, being the order granting the Tampa-Sebring certificate.

Mr. Inglis: That is correct. On the conditions that these competing motor carriers would be protected on the water-borne commerce, you do not have another?

Mr. Abeles: No.

By Mr. Inglis:

Q. Do you have another application to remove condition 3 contained in the order of February 17, 1940?

A. Let me get straight on the dates and orders here. Where is the order of February 17, 1940?

Mr. Abeles: Just a moment. I think I can answer, that because I am counsel for it.

(Discussion outside the record.)

By Mr. Inglis:

[fol. 1985] Q. No, is the correct answer, is it not, Mr. Arnold?

A. No.

Q. Do you have any objections to this Commission fixing key stations on your Tampa-Sebring operation at a choice of say two of the following four points, following five points, Lake Wales, Winter Haven, Bartow, Mulberry, or Avon Park in addition to the termini?

A. We would certainly have objections to that.

Q. Do you object, as I understand then your position to be, you object to restrictions on the Tampa-Sebring opera-

tion since you seek the removal of the present condition 3, and do not desire any key stations placed on that route.

A. That is correct. We could not operate through key stations on this route and due to the train service make the delivery of the shipments as proposed to make by the operation of this truck.

Q. The train service is subject to your control isn't it Mr. Arnold. You could change the train service couldn't you?

A. Certainly we could change the train service.

Q. What efforts have you made to adapt your operations to *to* key stations plans in Florida. Have you made any at all to attempt to comply with the key station plan?

A. I don't know exactly what you mean by that.

Q. I mean if you have made any truck schedule adjust-
[fol. 1986] ments, have you made any rail schedule adjustments, have you done away with any agencies or created any agencies, have you done anything about the operation of your trains or your trucks in an effort to give a good faith try to a key station plan. If so, what have you done?

A. We have made no change.

Q. All right sir. On the Jacksonville-River Junction operation at present, you have no key stations on the Jacksonville Live Oak segment do you?

A. No, sir.

Q. And on the Live Oak-River Junction segment your key stations are Monticello, Tallahassee, Quincy, and River Junction at present are they not?

A. That is correct by the proposed.

Q. Those are the key stations contained in the order of January 24, 1941 aren't they?

A. That is correct.

Q. You haven't operated Live Oak-River Junction segment under the provisions of the order of January 24, 1941 have you?

A. We haven't operated either segment under the provisions of January 24, 1941.

Q. Do you construe that the orders in these entire proceedings restrict your freight from Jacksonville to Live Oak, to that freight that has had a prior haul by rail or
[fol. 1987] will have a subsequent haul by rail?

Mr. Abeles: You mean as set forth in orders of January 24, 1941, or as set forth in the effective order referable to that route now?

Mr. Inglis: What I mean by that, if he construes the operation to be at all restricted under, one, a prior or subsequent rail haul restriction, and two, a key station plan.

Mr. Abeles: At the present?

Mr. Inglis: At the present, yes.

The Witness: At present we construe that by being restricted by the prior rail haul provisions.

By Mr. Inglis:

Q. As to the Live Oak-River Junction segment do you likewise construe that to be restricted by the prior rail haul provision?

A. Yes, sir.

Q. You have had a relaxation of that provision though, and a substitution of a key station plan, and you now seek a modification of key station plan set out for that route. That is true, isn't it?

A. I might argue with you on the question of relaxation there. I will say this, that the proposed key station restrictions in place of the prior rail haul restriction has been set up for that segment of the route.

Q. Your proposal for that segment of the route is that you [fol. 1988] should be restricted and not allowed to handle freight from Tallahassee to Quincy and from Tallahassee to River Junction. This is the restriction stated in your petition for modification. What other restrictions do you propose for that 227 mile operation?

A. Do you want me to repeat the restriction that I previously gave?

Q. I think your answer is known. The petition for modification is known.

Mr. Abeles: Let him answer the question if you want it answered although it has been answered at least once or maybe twice before.

Mr. Inglis: I would like to have it one more time. The petition for modification states the very burdensome impediment of not being able to operate those thirty or few more miles leaves the rest of it entirely without restriction.

Mr. Abeles: You are asking what restrictions we are now willing to accept is that correct?

Mr. Inglis: Put it that way or I ask you what modifications you are proposing. I guess my next question is what you are now willing to accept.

The Witness: We stated that restrictions from Jacksonville to River Junction, from Jacksonville to Lake City, Live Oak, Madison, Tallahassee and Quincy, not including freight from Jacksonville destined to any other point on this route.

[fol. 1989] By Mr. Inglis:

Q. I am beginning to see. You propose that you be allowed to handle freight from Jacksonville to what points beyond such towns as Lake City, Live Oak, and so forth.

A. That is correct.

Q. In other words, on a westbound truck operation out of Jacksonville you would have a sort of a hybrid key station arrangement. I don't quite understand, what would you do about the Lake City freight. You wouldn't carry that on the truck would you?

A. No, sir.

Q. You wouldn't carry any freight on the truck for Lake City, Live Oak, Madison, and Monticello, Tallahassee, Quincy, or River Junction.

A. Leave Monticello out of there.

Q. Leave Monticello out of my question too. Madison, Tallahassee, Quincy, River Junction is included in the question.

A. That is right, from Jackson.

Q. Of course, you would carry intra-state freight to all those points.

Mr. Abeles: We will not go into that.

Mr. Inglis: I would like to ask him if he would carry intra-state freight.

Mr. Abeles: I object to that.

Mr. Inglis: We have, I believe, a pretty involved truck [fol. 1990] operation here. We have counted up to 120 something miles there. In the testimony yesterday there was included some 220—this makes 552. 104—that makes 656, about 25 from Tampa north, up around there, which is about 777. There is a little Waldo operation that hasn't come out. I am not sure what that is so we will discount that completely, and some 34 miles to Fernandina. My mental arithmetic is a little bad. It is about 700 miles of truck operation in the State of Florida.

(Discussion outside of the record.)

Mr. Abeles: May we defer argument?

Mr. Inglis: I asked him if he handled on that truck intrastate commerce.

Exam. Livingstone: I will sustain the objection.

Mr. Inglis: You have grandfather rights on truck operations that you described yesterday from Jacksonville to Tampa and from Tampa north through Tarpon Springs, New Port Richey over to Brooksville, back into Tampa, have you?

Mr. Abeles: Just a minute——

Mr. Inglis: If it is necessary to note exception to your ruling there, will you do it?

Exam. Livingstone: Yes.

Mr. Abeles: I object to Mr. Inglis' last question. That doesn't pertain to the issues in this case. I don't recall the witness making any such statement.

[fol. 1991] Exam. Livingstone: What is the purpose of that question?

Mr. Inglis: The purpose is to show the possibilities of establishing, not the possibility of establishment, but the accomplished establishment of substantial operations under the guise of supplemental auxiliary truck service if that is not involved in the case nothing is.

Mr. Abeles: On these routes?

Mr. Inglis: And your other truck operations that are not here in question.

Mr. Abeles: I must insist in not involving truck routes other than those involved in this proceeding.

Exam. Livingstone: Question.

Mr. Inglis: I don't care to go into the details of those operations. I think the fact they exist should not be kept secret.

Exam. Livingstone: I don't know what the authority is under the grandfather application is at this time. It is a matter of record with the Commission, however.

Mr. Inglis: I haven't asked him the details of that authority. I simply asked him if he had those grandfather applications. That is perhaps a partial application of why they are not involved here. In other words, they already have that truck operation unrestricted, it doesn't have to be if this weakly restricted operation ties up with a- unrestricted one, by control, by conditions, there, or any other [fol. 1992] condition to make it supplemental, are likely

to fail, if the examiner in considering this broad picture doesn't want to consider that, you can't possibly have the entire picture before you.

Exam. Livingstone: I don't think it will be necessary to go into the grandfather applications.

Mr. Inglis: Let me ask two or three questions along the same lines. On those, I will assume that your objections are made, Mr. Abeles, and that the Examiner rulings are the same.

(Discussion outside of the record.)

Mr. Inglis: Mr. Arnold, you have connections at Jacksonville with your own truck operation between Jacksonville and Tampa do you not?

Mr. Abeles: Objections. Not because we have anything to conceal. I think we are unduly encumbering the record with irrelevant matters.

Exam. Livingstone: Sustained.

Mr. Inglis: You have connections at Tampa with the Tampa-Sebring operation, between Tampa-Sebring operation and your Tampa, Tarpon Springs, New Port Richey, Brooksville operation haven't you?

Mr. Abeles: Objections.

Exam. Livingstone: Sustained.

Mr. Inglis: You have connections at Waldo between [fol. 1993] your Tampa Jacksonville operation and a sort of local delivery operation in that section haven't you.

Mr. Abeles: Objections.

Exam. Livingstone: Same ruling.

Mr. Mulholland: In order to get the record clear are you talking now about possible intra-state movements or inter-state movements on these routes?

Mr. Inglis: Obviously both are entirely possible.

Mr. Mulholland: The reason I asked that, I would like to join in it and take exceptions to the Examiner's ruling if he is ruling it isn't pertinent in this case to determine whether key points should be on the routes involved in this case, when they connect up with other routes that are handling interstate commerce.

Exam. Livingstone: My position is that the grandfather applications have no place in this hearing. That is my position in the matter. I don't know the extent of the grandfather applications at this time.

Mr. Beall: I would like to join in the exceptions to that ruling if you please Mr. Examiner.

Exam. Livingstone: All right, sir.

Mr. Abeles: Of course, the fact that I have made objections to Mr. Inglis' question accompanied by rather elaborate explanatory statements does not imply my acquiescense in the statements of the fact because they contain many [fol. 1994] inaccuracies as to the status of these operations.

Mr. Inglis: I put in one intentional statement of fact to see if you would let him explain it, but you won't have anything to do with the Waldo operation.

Exam. Livingstone: Proceed.

Mr. Inglis: Mr. Arnold, are you willing that the points of Jacksonville and Tampa, both of which are termini of operations involved in this case, but which connect your Tampa-Sebring operation and your Tampa-River Junction operation be made key stations, or that some restriction equivalent to the key station plan be imposed on the movement of motor borne traffic through those two Cities.

(Discussion outside of the record.)

Mr. Inglis: I am asking if he is willing that they be made key stations.

Mr. Abeles: I object to that question. According to my understanding of the question routes other than those covered in this proceeding——

Mr. Inglis: It doesn't necessarily involve another route to ask if he is willing if the termini of these routes be made key stations.

Exam. Livingstone: Are you taking up this grandfather operation application now between Jacksonville and Tampa?

Mr. Inglis: No. I am asking if he is willing to have [fol. 1995] Tampa which is on the Tampa-Sebring route involved in Sub 19 and Jacksonville which is on the Jacksonville-River Junction route involved in Subs 9 and 10, made key stations?

Exam. Livingstone: You may answer that, Mr. Arnold.

Mr. Abeles: Before he answers that Mr. Examiner, I would like to insist that he define with respect to what routes he is asking the witness as to his willingness to establish them as key stations, because I feel quite sure that the Examiner understands that a key station in and of itself means nothing but it is the designation of two

points on a given route which results in the restriction. Now when Mr. Inglis asked the witness whether he had been willing to have Jacksonville and Tampa named as key routes, the question doesn't mean anything unless he defined with respect to what routes and with respect to what other key stations he is asking the question.

Mr. Inglis: I am unable to agree that the question doesn't mean anything. I think the question means the meat of this case. I think it is entirely proper to ask him if he is willing that these two points be made key stations or the equivalent of key stations.

Mr. Abeles: I object to the question unless it is coupled with a statement by Mr. Inglis with respect to what routes he is referring.

[fol. 1996] Exam. Livingstone: What routes are you referring to?

Mr. Inglis: I refer to all other truck operations of the railroads.

Mr. Abeles: Regardless of whether they are involved.

Mr. Inglis: Whether they are on subs, 9, 10, 18, and 19, or whether they might be involved in some other applications which we can't mention here today.

Mr. Abeles: Then I object to the question. It is obviously too broad unless he is willing to state with respect to which routes.

Exam. Livingstone: Sustained.

Mr. Inglis: Mr. Examiner, the hearing here has been set down to determine what key stations should be imposed.

Exam. Livingstone: Absolutely.

Mr. Inglis: I am asking if he is willing to the two most important towns in Florida being made key stations.

Exam. Livingstone: That is true. I asked you to explain that, but you won't.

Mr. Inglis: You won't let me.

Exam. Livingstone: You are talking about these additional grandfather routes here.

Mr. Inglis: I am not except as they may be involved in the use of Subs 9, 10, and 19. Those other operations must not be involved here, because you have ruled they haven't. [fol. 1997] I am simply asking if you are agreeable to an appropriate restriction such as the naming of the cities of Jacksonville and Tampa the termini of the presently involved operation as key stations.

Exam. Livingstone: On these named routes as between Jacksonville and River Junction or between Jacksonville and Live Oak rather.

Mr. Inglis: Yes, on any freight that might move over those two points.

Exam. Livingstone: I think Mr. Arnold is perfectly capable of answering that question.

(Discussion outside of the record.)

Mr. Abeles: He can answer it but he has answered it at least three times to my knowledge. He has stated——

Exam. Livingstone: In order to expedite the hearing answer the question.

Mr. Inglis: Please answer that question yes or no Mr. Arnold.

Mr. Abeles: No the question can not be answered yes or no.

The Witness: From Jacksonville to Tampa—I am not clear as to whether he is talking about the Jacksonville to River Junction or what.

Mr. Inglis: I am not referring to the Jacksonville Tampa operation, we are pretending there is no such thing. I am [fol. 1998] referring to the use of the Tampa-Sebring route and the Jacksonville-River Junction route and I would like to have you confine your answer to the use of those two route, freight that would move along them and then tell us whether you are willing to the points of Tampa and Jacksonville being named key stations or some appropriate and equivalent restriction be made upon the passage of truck borne freight through those two cities.

The Witness: Well if a restriction could be worked out on that basis I would have no objections to a restriction that would prohibit the movement of inter-state freight from the Jacksonville-River Junction route to any point on the Tampa-Sebring route.

Mr. Abeles: Does that answer the question you had in mind Mr. Inglis?

Mr. Inglis: No. I want to—I don't mean freight that moves over both routes. I mean freight that moves over either route.

The Witness: One would have no relations with the other if it doesn't move over both,

Exam. Livingstone: The question is not clear at all see if you can reframe the question and take up one route at a time.

Mr. Inglis: Are you willing, Mr. Arnold, that Jacksonville be named as a key station in the use of the Jackson-
[fol. 1999] ville-River Junction operation.

The Witness: Why, we have already named Jacksonville as a key station in connection with the Jacksonville-River Junction operation.

By Mr. Inglis:

Q. I don't agree that you have. Are you willing it be named?

A. On the basis which we have put up that we would accept the restriction. On that basis we have testified to.

Q. Are you willing that Tampa be made a key station on freight moving through that point by truck destined to or originating on the Tampa-Sebring operation?

A. You are mixed up on that question. What you asked is if I would have any objection to key stations on the Tampa-Sebring route. We have already covered that.

Q. I am not talking about that. I am talking about truck borne freight moving through Tampa to the Tampa-Sebring route or from points on the Tampa-Sebring route to points beyond Tampa. Are you willing that Tampa be a key station on that type of movement?

Mr. Abeles: Mr. Examiner, I object. That question can not be answered because it doesn't deal with the key stations restrictions intelligibly. I say that with all deference to Mr. Inglis in view of the fact as I have previously stated the naming of a single key station on a route means nothing in the Commission's theory of key station restric-
[fol. 2000] tions because restrictions results only from the imposition of two or more key stations if I make myself clear. And if Tampa was named as the only key station on that route there would be no resulting restrictions.

Mr. Inglis: I have already asked him if he would object to the naming of four other points as key stations.

Mr. Abeles: When you get beyond one you are getting to a different proposition.

Mr. Inglis: I am asking as to Jacksonville and Tampa being key stations to give the Commission some form so

the Commission can make a ruling to keep these—in an effort to give the commission some information that would enable it to enter an order that will keep these truck operations in fact supplemental and auxiliary.

Mr. Abeles: My position is that I have no objections to the Witness answering the question although I don't think it will mean anything if he does.

Exam. Livingstone: You may answer, Mr. Arnold.

Mr. Abeles: If he understands the question.

The Witness: If I understand what he is talking about. We have been discussing the Tampa-Sebring route. He asked about key stations, Tampa and three or four other points whether we would have any objections. I said we would for the reasons that we had already explained that: There would be no way to get freight through the key [fol. 2001] stations. I don't understand what the next question is or what the next application is to Tampa-Sebring route.

Mr. Inglis: You have answered my question some time ago as to Avon Park, Lake Wales, Bartow, and a couple of other points, asking you in addition, if you have any objections to naming Tampa as a key station.

The Witness: If you don't name any other point on the route as a key station, what is it.

Mr. Inglis: I think you ought to name the others too. I am asking your view on it.

The Witness: I have told you we have objections to that.

Mr. Inglis: That would impede the movement of truck borne freight from a point like Brookville to a point like Lake Wales would it?

Mr. Abeles: We are getting off the route.

Mr. Inglis: It would impede truck borne freight from a point like Brookville to a point like Avon Park or Lake Wales won't it.

Mr. Abeles: I have no objections to his answering the question.

Exam. Livingstone: I don't follow you.

Mr. Inglis: The reason you don't follow Mr. Examiner you don't have the facts which I have tried to bring out. You won't allow me. I can't help it. He has a possible [fol. 2002] truck operation from points nearby Tampa, through Tampa, to points on the Tampa-Sebring route.

Mr. Abeles: All of which would be intra-state Commerce.

Exam. Livingstone: All of which is not at issue in this hearing.

Mr. Inglis: It could be intra-state. And it is very much involved in the hearing. Your ruling is otherwise, so we will stick to that.

Exam. Livingstone: Proceed with the questions.

Mr. Inglis: Mr. Arnold do you propose to interchange freight moving along the Jacksonville-River Junction operation or along the Tampa-Sebring operation with truck lines that might reach points not served by either your truck lines or your rail lines.

(Question read by the reporter.)

Mr. Abeles: Speaking of freight moving over those routes by truck?

Mr. Inglis: Yes.

Mr. Abeles: I object to that question.

Mr. Inglis: Why.

Mr. Abeles: I don't see that it has any relevancy to the question of key stations.

Mr. Inglis: I think his method of operation is quite important.

[fol. 2003] Exam. Livingstone: Answer the question.

The Witness: Answer the question?

Exam. Livingstone: Yes. If you can. Do you propose any interchanges with other truck lines?

The Witness: No.

Mr. Inglis: That applies to both the Florida routes, all three of the Florida routes?

The Witness: Yes.

Mr. Inglis: Do you propose to construct your rates on the basis of the rail mileage or the highway mileage which I note from your testimony a moment ago was not always identical.

Mr. Abeles: Objection.

Exam. Livingstone: Sustained.

Mr. Inglis: It is a part of the Seaboard's established practice not to interchange with independent common carrier truck lines except in extreme circumstances isn't it?

Mr. Abeles: Objection.

Exam. Livingstone: You may answer.

The Witness: I think I am going to have to have you repeat that.

Mr. Inglis: Repeat it.

(Question read by the reporter.)

Mr. Abeles: I would like to withdraw my objection to that question.

[fol. 2004] Exam. Livingstone: All right.

The Witness: Question?

Mr. Inglis: I have no further questions.

Exam. Livingstone: Is there any further cross-examination?

Mr. Wiprud: Yes, sir.

By Mr. Wiprud:

Q. Mr. Arnold, will you state, if you know, whether at the hearings on the original applications on these proceedings the railroad, in assuming its burden of proof to show public convenience and necessity, submitted statements or estimates of tonnages to be moved by motor truck as to each of these operations?

A. Estimates of tonnage to be moved by motor trucks, I can't answer. I am not familiar with that.

Q. As far as you know the record contains no such estimate or statements.

A. I have not checked the record for that purpose. I can't answer that from my own knowledge. I don't recall.

Q. Is my understanding correct, you do not intend to submit estimates of tonnages that will move over these various operations in the event the pending application is approved?

A. We have nothing to submit here. We made the point that we would submit anything that the Commission desired and explained to one of the gentlemen just what would be involved in endeavoring to arrive at those figures. Now as I understand what you are asking, if we would have any objections to submitting estimates of tonnage that these [fol. 2005] various trucks would handle.

Q. I am asking you whether you propose to submit any estimates of tonnages in connection with the operations proposed and for which authority is sought in this application.

Exam. Livingstone: The answer is that you do not propose to enter any traffic estimates. Is that right, Mr. Arnold?

The Witness: We do not propose here to submit it.

Mr. Wiprud: In the light of the witness' answer and in the light of the testimony at this hearing and denial by the Examiner of the request of Mr. Beall, I would like to submit the following motion: The Anti-Trust Division of the Department of Justice moves, you, Mr. Examiner, and through you the Interstate Commerce Commission, that applicants be required to furnish the Commission for use in this hearing, the tonnages transported by its motor truck facilities during the year 1940 and for those segments where it is authorized to operate, but does not operate, and to the extent that applicant seeks to remove restrictions in this proceeding to give estimates of tonnages for such proposed new motor carrier operations. Included in this motion is a request that such tonnage figures be divided to show interstate and the intrastate tonnages, and separated as to carload and less than carload freight.

Mr. Examiner, in support of this motion, I respectfully [fol. 2006] submit the following: First, the Commission is a fact finding body and not a judicial tribunal. I might simplify that by stating that Congress could have conducted this hearing through one of its committees, and if it had done so, would have sought all the facts necessary to determine the public interest involved in this proceeding, as contrasted with perhaps the narrow issues that are ordinarily found in a judicial proceeding. That duty it has delegated to the Interstate Commerce Commission. Second, the issue in this proceeding is as to whether the public convenience and necessity will be served by the granting of this application to lift restrictions to enable the applicant to conduct new operations. Three, that cannot be decided by this Commission without information as to the traffic moved, and estimated to be moved by these truck operations. Some guage is necessary to a determination of what is a proper key station and what the effect of the granting of this application would have upon established motor truck independent operations. And, therefore, this question of what tonnage will be affected, what tonnage will be moved, is essential to an ultimate finding in this proceeding. Four, the testimony now in this record goes to the proof of the convenience to the railroad, if the application is approved. In view of the decision there is here also involved not only the question of how the railroad may use these auxiliary

truck operations in connection with their rail service, but [fol. 2007] whether they would unduly restrain competition and finally, I repeat the Commission is a fact finding body. Its orders can only be defended in the Courts, if such orders are based upon findings having a rational basis in the evidence. Without the information required by this motion, there could be, in the view of the Division, no rational basis for a finding of public convenience and necessity.

Exam. Livingstone: My ruling is the same and the basis for the ruling is that I will not require the applicants to expend several hundred dollars possibly to figure up this information.

Mr. Wiprud: May I state that my motion was also directed to the Commission, and I ask that it be submitted to the Commission.

Exam. Livingstone: Yes. It is on the record.

Mr. Abeles: Before there is any further argument on that motion, I want to get clearly a statement as to what was requested. May I ask the reporter to go back and read the first part of Mr. Wiprud's motion.

(Discussion outside the record.)

Mr. Inglis: Now, Mr. Examiner, the truck carriers that I represent here, all common carriers by motor truck operating in Florida, move you and through you the Interstate Commerce Commission, that the applicant be required to show as a part of the record in this hearing its motor truck operations in Florida, in their entirety, in order that [fol. 2008] this Commission, as a fact finding body may see the relation, of any between those operations and the operations directly involved in this hearing.

Exam. Livingstone: The motion is denied.

Mr. Inglis: For my reasons, I give the same as Mr. Wiprud gave for the Anti-trust division.

Exam. Livingstone: The motion is denied.

Mr. Beall: Mr. Examiner, I would like to have the record show that I join with Mr. Wiprud and Mr. Inglis in their motion and request an exception to the Examiner's ruling. In addition I wish to submit certain motions of my own. First, I move the Commission that this hearing be continued to a future time and place to be designated by the Commission but at a date not less than sixty days from the present time for the purpose of giving protestants an opportunity to prepare and produce evidence in support of

the proposition that the certain modifications which the applicant proposes would result in a railroad monopoly of motor transportation. Would result in destructive competitive practices and would be inconsistent with the public interest in support of that motion. I say that the need for such further hearing and evidence arises from the testimony offered by the applicants here and which protestants have had no opportunity to meet. I wish to make an additional motion to move the Commission to hold this hearing [fol. 2009] open for decision on the exceptions taken by protestant to the exclusion of evidence relating to facts having to do with competition between applicant and independent motor carriers and that the Commission rule that evidence bearing on competition should be received and that further hearings be held for the purpose of receiving such evidence. I make a further motion to move the Commission to enter a further order and notice of hearing in these proceedings and to broaden the scope of the hearings to include all matters affecting competition between the railroad motor carrier operation and the independent motor carriers. The reason for that is all evidence bearing on this issue has been excluded from all hearings on these applications and the Commission does not have before it a record upon which necessary statutory findings may be made.

I make the further motion, I move the Commission to enter a further order and notice of hearing and to broaden the scope of the hearing to include inquiry respecting the extent, if any, that the modifications proposed by the applicant are or might be inconsistent with restriction number one. The reason for that is the refusal to permit protestant to develop the point at this hearing.

I make the further motion, I move the Commission to require the applicant to produce for the record a statement [fol. 2010] showing all tonnage handled by the Railway Express Agency at each point covered by the pending application and to show separately the revenues of the Railway Express Agency at these points and the proportion of such revenues which the Railway Express Agencies pay to the Seaboard Air Line for services, that this information be supplied for the period from October 1 to October 31, 1941. The reason for this motion being that the Seaboard Air Lines, or applicant, is one of the owners of the Railway Ex-

press Agency and said Express Agency is one of the means which the railroad has of handling l.c.l. freight in competition with independent motor carriers.

I further move the Commission to take no action with reference to the restrictions modifications sought by the applicant here until after the question of hearing and exclusion of evidence has been disposed of through brief of argument before the full Commission. That concludes the motions, Mr. Examiner.

Mr. Abeles: Does the examiner wish to hear from me on those motions?

Exam. Livingstone: If you care to make a statement, you may.

Mr. Abeles: The motions are so voluminous and cover so much ground that I hardly know where to begin and I am afraid to begin, for I will find it difficult to locate a stopping point. Generally speaking, I think that the answer to [fol. 2011] Mr. Beall's numerous motions have been already covered in the changes that have taken place in the course of the hearing. I would like to point out this in connection with his dilatory motions, namely the request that further hearings be held and that action be withheld on the present petitions until certain, what he terms, preliminary hearings be passed on by the Commission. The original applications in these cases were filed by the applicants here as far back, I believe, as 1936, I think the year is. The applications were pending before the Commission for two or three years and finally resulted in an order authorizing a number of these routes in July 1939, a period of approximately three years between the filing of the original application and disposition by the Commission. As the result of the restrictions imposed in those orders Sub petitions for modification have been filed by the applicant, were filed by the applicants originally I think some time in 1939, and those petitions have taken their course through the Commission resulting approximately two years later—that should have been January 1940, when the petitions for modification was filed, and those petitions have just come to a head with the hearing here, so we have a period of almost five years between the time the original action was taken by the applicants here in the effort to obtain the necessary authority from the Commission and the present time and we are not through yet.

[fol. 2012] Mr. Beall: Is this on the record.

Mr. Abeles: Yes.

Mr. Beall: I wanted to be heard.

Mr. Abeles: I am just pointing that out as a time element for denying the motions for further delay here. I can say many other things.

Exam. Livingstone: I can say in so far as the request for continuance is made, that is denied. To the portions of the motion I am unable to follow at this time. However, they are on the record. You are of course at liberty to petition the Commission for further hearing if you so desire. I have no authority whatsoever to change the place of hearing.

Mr. Beall: May I modify my petition to saying that I not only submit these to you but through you to the Commission so they will go to the Commission.

Exam. Livingstone: Yes. The petition for continuance is denied. We will no doubt have briefs in this case. I don't want to continue argument here.

Mr. Beall: May I be permitted to make a very brief statement; in view of the fact the opposition has their's on the respective motions on the record. I have a few very pertinent words I would like to say.

Exam. Livingstone: Make it brief.

[fol. 2013] Mr. Beall: All right, sir. In respect to these hearings being described having gone on for two or three years, I would like to say in every one of them these petitioners have refused to produce the evidence. All efforts of the protestants to get it in the record have been excluded by the Joint Board. Exceptions were taken and the Commission has never acted on those exceptions.

Exam. Livingstone: I think that would be better to take that matter up on a brief. You are at liberty to discuss any problems which you have on brief.

Mr. Beall: May I finish this part of the statement?

Exam. Livingstone: Yes.

Mr. Beall: It is important for this reason. I appreciate the privilege of filing a brief. Briefs were filed in prior proceedings. The Commission proceeded to dispose of the question without hearing the protestants on the exceptions which they took. If the Commission should by any chance rule that the scope of this hearing is as narrow as the applicants contend, and the Examiner has held, and if they

should by any chance rule that this evidence which we have tried to get in should be excluded, I want the opportunity to test out that question by appropriate proceedings before the Commission can proceed with the rest of it. That is why it is important to separate the procedure from the ultimate facts in this case. I want to preserve my position [fol. 2014] in order to do that.

Mr. Wiprud: May I make a short statement of the position of the Anti-trust division.

Exam. Livingstone: Yes.

Mr. Wiprud: Do I understand first of all I can make this inquiry. Do I understand now that the record is about to be closed at this hearing.

Exam. Livingstone: That is correct.

Mr. Wiprud: I would like to make the motion for the Division that the hearing be continued for a period of thirty days in order to enable the Division to present testimony which is lacking in the record in regard to the effect of the granting of this application upon competition. The Division is in this proceeding, Mr. Examiner, for one reason, that is because of the issue of undue restraint of competition. That is the only issue with which it is concerned. In our view the record is incomplete, which is ordinarily the case in these proceedings in so far as the parties are concerned, whether applicants or interveners. In other proceedings involving this issue in which the Division has intervened, it has presented evidence, the Commission has considered or has it under consideration; therefore, I would like to make a motion for the Division that it be permitted sufficient time within which to study the record in this case and complete the record from the standpoint of public [fol. 2015] interest in the question of competition.

Exam. Livingstone: I will be glad to hear any witness you have right now, as a matter of fact the question of holding the case open, that would be impossible. I will be glad to take any witnesses you may have at this time.

Mr. Wiprud: We haven't means of knowing the extent of the presentation made. Under the ruling of the Examiner, and considering the direct and cross-examination of this witness which I have outlined here, in the light of that, his testimony is valueless because of the narrow issue to which the Examiner has confined this particular proceeding. If I understand the record correctly, Mr. Examiner, in all the

prior proceedings, the hearings were held on these individual applications, and the hearing in one application was not permitted to be related to the other. This is, as I understand, counsel will correct me if I am wrong, the first time these actions have been heard or consolidated for the purpose of hearing. This is the first opportunity that anybody has had of presenting any testimony of the effect of all these operations upon independent operators. Now, there isn't an iota of testimony here in regard to competition, the effect of competition, or the necessary elements that go to the question of undue restraint of competition. And if the Commission will grant us additional time, we will undertake a presentation on that subject, in the public [fol. 2016] interest.

Mr. Abeles: Mr. Examiner before you close the record, I would like to ask certain questions which I think—

Mr. Inglis: I have a witness I am waiting for the applicant to close his case.

Exam. Livingstone: The applicant rested in this case yesterday Noon at 12:00 O'clock.

Mr. Abeles: I closed my case in chief.

Mr. Inglis: I am prepared to show here today by a witness——

Mr. Abeles: Before you get at that, I was in the midst of a statement which I am anxious to complete on the record.

Mr. Inglis: All right, sir. I will wait.

Mr. Abeles: With reference to what Mr. Wiprud has just said before the record is closed, I am quite anxious to clarify it with respect to the position of the Department of Justice in this case and in what respect it considers that this is a proper proceeding in which to develop the question which apparently is of concern to the Department, that is the possible restraint of competition by the operation of these motor vehicles. In that connection, I would like to point out as has been repeatedly pointed out in this record that the proceedings were reopened for further hearing for a single narrow purpose, namely to consider what if any modifications of condition 3 should be made. Now it seems from [fol. 2017] the appearance of Mr. Wiprud here for the Department of Justice that the Department is attempting to make that very narrow proceeding a vehicle for the determination of a question relating to restraint of trade. Which has no possible relation to the narrow question for which the proceedings were reopened. I would like very

frankly, I am confused about the position of the Department and unless it is as I have stated and if it is as I have stated; I think it is quite improper to present it at this time and place. Then I must admit I can't see the propriety of any of his motions.

Mr. Wiprud: May I answer that, Mr. Examiner?

Exam. Livingstone: Yes.

Mr. Wiprud: The position of the Division is the Anti-trust laws apply to transportation. They apply to transportation and there is nothing in the Interstate Commerce Act to the contrary. It is true that in merger proceedings, consolidation proceeding, acquisition proceedings, that the approval order of the Commission will set aside the Anti-trust laws in so far as the parties are concerned, and the transaction is concerned, but that exemption provision applies only to those financial proceedings. Now it is the duty of the Department of Justice to enforce anti-trust laws, that doesn't mean it infringes at all upon the regulatory power of the Interstate Commerce Commission. But until [fol. 2018] the Commission finally passes upon a given case, it certainly is clearly the duty and the Division has taken that position to present what is often lacking in these cases that is the evidence from the standpoint of the public interest to the end that the record may be complete and a monopoly or undue restraint of competition will not result. The Commission, of course, makes that decision. The Commission only makes that decision upon a record. The Division conceives it to be its duty under the Anti-Trust laws in these key proceedings and it considers this a key proceeding, that presents that evidence. I have been here for the two day period. I have heard the testimony. I have pointed out to the Examiner one element which we believe is necessary in order to properly appraise the effect upon competition. There are other elements that we could discuss, but the issue has been confined here to a very narrow, extremely narrow scope and I would like to inquire from the Examiner and from Counsel in what proceeding that has occurred prior or heretofore in this proceeding. Has there ever been an opportunity to present the competitive picture in so far as all the operations of this railroad are concerned.

Mr. Abeles: I can answer that very briefly. In every hearing that was held upon applications for certificates of public convenience and necessity, any Competitors of the

railroads along the routes involved were afforded and exer- [fol. 2019] cised fullest opportunities to appear and protest and oppose the granting of the application. The parties who would be directly affected by the competitive aspect or element of these operations were there, and had full opportunity to be heard and there are hundreds of pages of record of their testimony.

Exam. Livingstone: How about your map it hasn't been received.

Mr. Abeles: I move it be received.

Mr. Inglis: I object to the receipt of the map and the considerations of the Florida population figures, because they are inaccurate. I further object to the receipt of the map as to the Florida operations because they do not reveal the other truck lines operated by the railroad in the territory—

Mr. Beall: I concur in his objection.

Mr. Inglis: Therefore do not give the picture.

Exam. Livingstone: Your objection is on the record. The map is received as the applicant's Exhibit 1.

(Applicant's Exhibit 1, witness Arnold, received in evidence.)

Mr. Wiprud: May the record show the Division joints in the motion of Mr. Beall.

Mr. Inglis: Also the Florida carriers I represent join in Mr. Beall's motions.

Exam. Livingstone: Yes, sir. Are there any other questions of Mr. Arnold?

Mr. Abeles: I have one or two questions, just a few [for. 2020] and I will be very brief.

Redirect Examination.

(By Mr. Abeles):

Q. Mr. Inglis asked you whether any effort had been made by the applicant to adjust their rail schedules or their operating setups to the key station plan proposed in the order of January 24, 1941, or as I recall it any key station plan, wasn't that correct Mr. Inglis?

Mr. Inglis: I asked him what effort had been made to adjust the schedules or the other operating problems to the key station plan as it applied to Florida operations.

Mr. Abeles: Your question was restricted to Florida operation.

Mr. Inglis: Yes.

(By Mr. Abeles):

Q. Now Mr. Arnold in connection with the operation of train schedules, are they set up primarily to handle l.c.l. business or carload business?

A. Well the great preponderance of traffic is carload business and the train schedules are naturally set up as best meet conditions as affecting the movement of carload freight.

Q. A change in train schedules which we would assume might be made to relieve the impediment of these key stations would result in disrupting the service provided on carload business or would it have that tendency?

A. Well I don't get the application of that question to the key station proposition.

[fol. 2021] Q. Let us suppose on the Jacksonville River Junction route it might be possible to adjust our train schedules that certain of the impediments that would result from the imposition of the key stations proposed might be relieved. Would that be apt to have any effect upon the movement of the carload business carried by those trains?

A. Well it would to a large extent, because of the time required to peddle or transfer l.c.l. freight and delay the movement of the train.

Q. Now in connection with the transfer movement at various stations, I believe it was suggested by Mr. Inglis that we might be able to put station forces on that would enable us to perform the transfer movements at times when we say now we can not do it. I suppose that would be physically possible would it not?

A. Of course.

Q. We could do almost anything could we not if we didn't mind how much money we spent?

A. Practically so.

Q. So that the present set up as I understand it is adjusted to what the management regards as an economical and efficient method of operating the railroad as we can devise. Is that correct?

A. I think so.

Q. Now in connection generally with our position with [fol. 2022] respect to the key stations plan, Mr. Arnold, in

determining whether it could be made effective without seriously disrupting the effectiveness of our coordinated motor vehicle service, if we must not have regard first to the origin of the traffic, the destination of the movement. Is my question clear?

A. No, sir.

Q. In other words, the Commission has set up key stations, for example, on the Jacksonville-River Junction line. I believe at Quincy was the easternmost point there, Monticello, Tallahassee and River Junction. Now, as I understand the theory of your presentation, it is that we make no objection to the restrictions resulting from the establishment of those or any other key stations provided they are the origin and destination of package cars, is that correct?

A. Not entirely.

Q. You have accepted as unobjectional, for example, restrictions resulting from the key station plan where in most instances, not without exception, where package cars now operated from Point A to Point B, can satisfactorily handle that business, is that correct?

A. We have pointed that out in individual cases, yes.

Q. But the imposition of a key station restriction at point A and B, which would bar the handling of traffic by truck entirely between those two points does not take care of the distribution of traffic to or from intermediate points, is that [fol. 2023] correct?

A. That is correct.

Q. So that the movement, the origin and destination of the traffic and the direction of the movement must be considered I believe according to your theory in determining the propriety of key station restrictions.

A. That is correct.

Mr. Abeles: I think that is all.

Mr. Beall: I would like to ask one or two questions please.

Recross Examination.

(By Mr. Beall):

Q. You referred to carload and l.c.l. traffic. In order to clear me up on one point you have no doubt numerous any-quantity rates. How do you set it up in your statistics to divide this between carload and l.c.l. loads, what points do you use as a breaking point?

A. Well I don't think I can answer that question. That is an accounting question that I don't believe I have the information from which I could answer it.

Q. Maybe I could answer, Counsel.

(Discussion outside of the record)

A. It is ten thousand pounds.

Q. In connection with carload traffic, the various tariffs specify minimum weights for various classes of traffic. Can you tell me what is the lowest minimum weight for carload [fol. 2024] ratings you have on the Seaboard.

Mr. Abeles: I think you are going pretty far afield on this.

Mr. Beall: I will explain the purpose.

Mr. Abeles: I will have to put Mr. Kane on the stand if you want to go into that.

(Discussion outside of the record)

Mr. Abeles: It is my understanding it is ten thousand pounds.

Mr. Beall: For carload rating? I have two more questions not clearly cross examination, Mr. Abeles can answer it. In the original hearing on Sub No. 3, from Hamlet to Columbia, reference was made to two subsidiary rail companies of the Seaboard. One of them was identified as the Chesterfield and Lancaster Railway Company. The other was identified as the Charlotte, Monroe and Columbia Railroad Company. Will you please tell me from the points between which the Chesterfield and Lancaster Railway ran.

Mr. Abeles: From McBee to Jefferson, S. C.

Mr. Beall: Is that railroad still in operation?

Mr. Abeles: It is not.

Mr. Beall: In connection with your application under Sub No. 3, you asked for motor carrier rights paralleling those two railroads. Did you get them?

Mr. Abeles: We did.

[fol. 2025] Mr. Beall: Did you still have them?

Mr. Abeles: You mean, have they been revoked.

Mr. Beall: Yes, revoked or suspended in any way.

The Witness: Not to my knowledge.

(By Mr. Beall):

Q. Is it your contention you wish to retain those rights at this hearing?

A. We are not operating the truck that way, parallel to those lines at this time. In other words we are not serving Pageland or Jefferson.

Q. Are you willing to have those operating rights cancelled?

Mr. Abeles: I think that is as far as the witness ought to be called upon to testify in this proceeding on that point. He stated—

Exam. Livingstone: Revocation is not at issue in this proceeding.

Mr. Beall: That is all.

(By Mr. Inglis):

Q. Mr. Arnold, the adjustment of your truck schedules would not necessarily affect the movement of car load freight at all would it?

A. Well I think that would be possibly right far fetched if all the conditions or restrictions or what not on the truck operation were left out of consideration and adjustment of a truck schedule in and by itself. I would say no.

Q. I would like to ask one question to bring out the point, [fol. 2026] matters of managerial discretion that might be involved in your testimony here today, that doesn't affect the operation of carload freight trains, does it?

A. Well, there could be a number which are matters of managerial discretion that might not affect the movement of a train, to handle carload freight, of course.

Mr. Abeles: That is all.

Exam. Livingstone: If that is all, you may be excused.

(Witness excused.)

Mr. Inglis: I would like to know if that is the case for the railroad?

Mr. Abeles: Yes, that is all.

Exam. Livingstone: Proceed. The protestants may call their first witness.

Mr. Inglis: I have one other witness.

Exam. Lovingstone: Very well.

Mr. Inglis: I will call Mr. Wolfe.

[fol. 2027] W. T. WOLFE was sworn and testified as follows:

Direct examination.

By Mr. Inglis:

Tell the Examiner your name and where you live and your occupation, please, sir.

A. W. T. Wolfe, Traffic manage for Flamingo Truck Lines, Inc., Second and Pearl Street, Jacksonville, Fla.

Q. For how long have you been in the traffic work in Florida, Mr. Wolfe?

A. Traffic and transportation about thirty—well, thirty years is enough, I guess.

Q. In that work have you become generally familiar with the operations of common carrier truck lines in Florida?

A. I have.

Mr. Abeles: We will waive all questions of qualifications, Mr. Inglis.

By Mr. Inglis:

Q. With what common carrier truck lines operating in interstate commerce does the proposed Seaboard Tampa-Sebring truck operation compete?

A. Well——

Mr. Abeles: Mr. Examiner, we are faced right at the forefront of this witness' testimony with the question again, with the injection into this proceeding of questions that have to do with the public convenience and necessity of these operations.

[fol. 2028] (Question read by the reporter.)

Exam. Livingstone: What connection would that have with the definition of key points?

Mr. Inglis: I want to show that the relaxation of restrictions in this territory, if that relaxation allows an unrestricted interstate truck operation, would result in an unrestricted truck operation to which there was competition. In other words, that there was competition on the line and if the protection afforded competition in the former orders is lost, that these lines would be without the benefits that were given in the former orders.

Exam. Livingstone: No key points have been designated on that route from Tampa to Sebring.

Mr. Inglis: He seeks to remove the other restriction with prior orders of the Commission have said were placed there for the protection of the carriers that operate in the territory. I believe it is pertinent to show that the carriers that were protected by the order of February 17, 1940, continue to operate in the same territory.

Mr. Abeles: The applications and hearings upon the applications for this and other routes afforded all competitive truck lines in that territory an opportunity to be heard on the question of public convenience and necessity, Mr. Examiner, and the Commission, of course, must be taken to have considered that aspect of these cases. It concluded [fol. 2029] that notwithstanding any possible effect that the proposed operations might have upon competitive truck lines, the public convenience and necessity required their operation. Now, the sole question before us today is whether or not those operations should be permitted to function effectively. As to that, I can't perceive any relevancy of evidence showing what competition from independent truck lines may exist along these routes and the extent of that competition.

Mr. Inglis: Let me answer that before you rule, if you please, Mr. Examiner.

Exam. Livingstone: Yes, sir.

Mr. Inglis: The prior hearing did as Mr. Abeles stated afford an opportunity to the independent truck lines to show the competitive aspects of the application and those independent truck lines accepted that opportunity and showed at that time that they did compete with the Seaboard Railroad and the Interstate Commerce Commission after consideration of that testimony imposed condition 3 upon the operation of the Seaboard Truck Line in order that that operation be not harmful to the two truck lines that operate in the territory. Today with no mention whatsoever of competition, they seek to remove the protection which was placed on that operation. I believe it entirely appropriate that I show that the competition still exists that they still need the protection.

Exam. Livingstone: You may answer.

[fol. 2030] The Witness: St. Johns River Line Company from Tampa to Sebring.

Mr. Inglis: Following substantially the same route as the Seaboard-Tampa-Sebring operation?

The Witness: That is correct.

By Mr. Inglis:

Q. What other truck carriers?

A. The Hunt Truck Line.

Q. Does it follow substantially the same route?

A. Substantially the same route from Tampa to Sebring.

Q. Are there any other Florida common carrier truck lines serving individual points on the line?

A. Central Truck Lines and Flamingo Truck Lines, Great Southern Trucking Company.

Q. Which individual points do those carriers serve that lie on the Tampa-Sebring route?

A. They serve Tampa, Plant City, Lakeland——

Q. Plant City and Lakeland are not on the proposed route.

A. Bartwo, Mulberry, and Lake Wales.

Q. Tell us what independent common carrier truck lines operating in interstate commerce compete with the Seaboard, Jacksonville-River Junction operation or with parts of that operation?

A. Central Truck line between Jacksonville and Live Oak, Flamingo Truck Lines between River Junction and Live Oak, K. & L. Transportation Company between Jackson-[fol. 2031] ville and Tallahassee, Acme Freight Lines between Jacksonville and Lake City.

Exam. Livingstone: In all probability there is a truck line paralleling all these routes, isn't that right?

The Witness: That is substantially correct.

Mr. Inglis: However, the K. & L. Transportation operate from Jacksonville to Tallahassee does not use the same road as the Seaboard.

The Witness: No, it doesn't parallel the Seaboard, it goes up through Georgia.

By Mr. Inglis:

Q. Goes up through Georgia back by way of Thomasville, back through Tallahassee?

A. That is correct, but is competitive with the Jacksonville-Tallahassee business.

Q. What Florida common carrier truck line competes in interstate commerce with the Seaboard Tampa-Jacksonville route?

Mr. Abeles: I am going to object to it.

Exam. Livingstone: I still don't get the purpose of this, Mr. Inglis.

Mr. Inglis: It is perfectly all right for you to keep your position consistent. I still think that the other Florida truck operations on the Seaboard make a great deal of difference in this case. I am simply keeping my position consistent as well by offering to prove what you would not let me bring out on cross-examination.

Exam. Livingstone: There has been no change in opera- [fol. 2032] tion of common carrier truck lines since the trial of the former applications.

Mr. Inglis: Yes, there has been a slight change in the frequency of the Jacksonville-Tallahassee service.

Exam. Livingstone: As far as the routes are concerned, they are the same, are they not?

Mr. Inglis: No, I believe the witness will tell you there are some more operations in existence that also serve Tallahassee.

Mr. Abeles: That is not the operation of his company.

The Witness: Yes.

Mr. Inglis: Those new operations are not by K. & L. but are by his company.

Mr. Abeles: That doesn't parallel this route, does it?

Mr. Inglis: It doesn't parallel that specific route, Mr. Abeles, but it is competitive with the traffic moving from Jacksonville into the west Florida territory.

Mr. Abeles: That is true of every truck line in Florida that operates either to or from points on this route or in connection with any line that does reach points on this route, isn't that same thing true?

The Witness: Yes, the truck lines do comprehensively serve Florida, that is right.

Mr. Inglis: The independent common carrier truck lines comprehensively serve every point named in the Seaboard [fol. 2033] truck application—named in subs 9 and 10 and 19 of the current Seaboard applications.

The Witness: I think that is substantially correct.

By Mr. Inglis:

Q. Rendering in some instances as frequent service as ten times a day, to take the whole combination of the service?

A. Probably to that extent, that would have to be checked.

Mr. Inglis: I believe that is all, Mr. Wolfe.
Exam. Livingstone: Cross-examination?
Mr. Abeles: I have no cross-examination of the witness.
Mr. Inglis: Let me ask one more question.
Exam. Livingstone: All right.

By Mr. Inglis:

Q. Mr. Wolfe, have you in your experience in traffic with common carrier truck lines ever offered to put into effect joint rates for a rail-motor service to any point served on your line.

A. We have.

Mr. Abeles: Just a minute, I object, Mr. Examiner on this ground, to the suggestion that use of independent motor carriers for the performance of the type of service for which we have been granted authority has been considered exhaustively by the Commission and definitely decided once and for all in the report and order of January 24, 1941, the Commission rejecting the feasibility of that suggestion consequently, I see no relevancy of the question.

[fol. 2034] (Question read at the request of the Examiner.)

Exam. Livingstone: Objection sustained.
Mr. Inglis: Have you, Mr. Wolfe, on behalf of independent common carrier truck lines in interstate commerce in Florida ever offered to establish joint rates with the applicants here to points served by your line but not served by their line.
Mr. Abeles: Same objection.
Exam. Livingstone: Same ruling.
Mr. Inglis: I offer to prove by this witness at this time that he has made such offers as were described in the two preceding questions and in both instances the offers are not and have not been accepted by the railroad.

By Mr. Inglis:

Q. Mr. Wolfe, have you made an analysis of the effect of railroad truck operations on the revenues of the Florida Truck lines?

A. No, I haven't made any detailed analysis of it. The matter has come to my attention quite frequently through the commercial department about business they have lost to

the rail truck operations, but I have no figures as to the exact tonnage and revenue involved in that loss.

Q. You do know, however, that you have lost considerable business to rail operated truck lines in Florida?

A. That is true.

Mr. Inglis: No further questions.

[fol. 2035] Cross-examination.

By Mr. Abeles:

Q. Has it by any chance come to your attention, Mr. Wolfe, that the railroads may have lost any business to the common carrier truck lines in Florida?

A. That is hypothetical. I wouldn't know.

Mr. Abeles: That is all.

Exam. Livingstone: Is there anything further, gentlemen?

(No response.) You are excused.

(Witness excused.)

Exam. Livingstone: Do you desire to file briefs?

Mr. Abeles: Might I ask whether this is going to be a proposed report case?

Exam. Livingstone: No, this is set for hearing only. There will be no recommended report and order.

(Discussion outside the record.)

Mr. Beall: I want to make a motion at this time, to move the Commission to make this a proposed report hearing.

Exam. Livingstone: It goes directly to the Commission for determination.

Mr. Beall: I move the Commission to change its order as to provide for a proposed report rather than a final order.

(Discussion outside the record.)

Mr. Beall: I make the motion that parties be allowed forty-five days in which to file briefs on these pending [fols. 2036-2037] motions, forty-five additional days from the time the Commission determines these questions for the filing of final briefs.

Exam. Livingstone: That is a long time.

(Discussion outside the record.)

Mr. Beall: I will stand on the motion I made, forty-five and forty-five.

Exam. Livingstone: We will let the brief date be January 14, 1942.

Mr. Beall: Note my exception please and as standing on my motion.

Mr. Abeles: Before the record closes, I would like to have it show if it does not already, that the Examiner offered to continue the hearing for an additional day for the purpose of receiving any evidence desired to be offered by the protestants. The offer was declined. I don't think the record shows that.

Mr. Beall: I object to that being a correct statement of the situation that the offer of proof has been made, the evidence has been refused, and the witnesses have gone home before the offer herein was made.

Exam. Livingstone: The hearing is closed and the case stands submitted at ten minutes to six.

(At 5:50 o'clock, p. m., November 13, 1941, the hearing was closed.)

[fol. 2038] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION OF RECORD BY APPELLANTS—Filed October 14, 1944

To the United States of America, the Interstate Commerce Commission, Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Seaboard Air Line Railway Company, or Their Counsel:

Please take notice that pursuant to the statutes and rules of Court in such case made and provided, the American Trucking Associations, Inc., Flamingo Truck Lines, Inc., Hunt Truck Lines, Great Southern Trucking Co., Central Truck Lines, Inc., K. & L. Transportation Company, Inc., and St. Johns River Line Company, plaintiffs in the above-entitled cause and in connection with their appeal, make the following designation of record:

1. Complaint—all—R. 4, et seq.

2. Amendment to Complaint—all—R. 171, et seq.

3. Order Permitting Amendment—all—R. 170, et seq.

4. Answer of the United States—all—R. 173, et seq.

5. Answer of the Interstate Commerce Commission—all—R. 175, et seq.

[fol. 2039] 6. Motion for Leave to Intervene (Seaboard Air Line Railway)—all—R. 179, et seq.

7. Order Granting Motion to Intervene—all—R. 183, et seq.

8. Answer of Intervenor—all—R. 185, et seq.

9. Stipulations 1 to 4—all—R. 200, et seq.

10. Opinion of Court and Dissenting Opinion—all—R. 365, et seq.

11. Judgment—all—R. 384.

12. Notice for Appeal, R. 385.

13. Petition for Appeal, R. 387.

14. Order Allowing Appeal, R. 388.

15. Assignment of Errors, R. 391, et seq.

16. Jurisdictional Statement, R. 397, et seq.

17. Citation, R. 410.

18. Portion of Record Before the Interstate Commerce Commission, to be printed. (List of dockets and pages attached.)

19. Portion of proceedings before the District Court, to be printed:

(a) Quotation from page 6 Plaintiff's Opening Brief before the District Court, R. 408

(b) Quotation from Opening Brief of Interstate Commerce Commission before the District Court, R. 141, et seq.

(c) Quotation from Transcript of Argument before the District Court, R. 260.

20. Order Allowing Enlargement of Time to Submit Stipulations, etc., R. 390.

21. Petition of Receivers of Seaboard Air Line Railway for Enlargement of Time to File Designation of Record, R. 427.

22. Order Enlarging Time for Filing Designation of Record by Intervening Defendant, R. 431.

23. Marshal's Return on Copy of Citation, R. 435.

24. Clerk's Memorandum as to Cost Bond, R. 436.

25. Statement of Points Upon Which Appellants Intend to Rely, R. 506, et seq.

[fols. 2040-2048] 26. Order Extending Time Within which Record on Appeal may be filed in Supreme Court, R. 515.

27. This Designation of Record.

October 13, 1944.

J. Ninian Beall, Investment Building, Washington 5, D. C., Attorney for Appellants.

Brashears, Beall & Beasley, Investment Building, Washington 5, D. C., of Counsel.

[fol. 2049] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON—Filed October 14, 1944

Appellants, both in brief and on oral argument, will rely upon each and every one of the points raised specifically in their assignments of error filed herein, before the District Court and identified as R. 391 of the Record, which said points, without omitting any thereof, but for the purposes of convenience and clarity, may be the more definitely and succinctly stated as follows:

Point 1

The orders of the Interstate Commerce Commission as set forth in Paragraph 4 of appellants' complaint filed with the District Court and including the reports and orders published in 17 M. C. C. 413; 21 M. C. C. 773; 28 M. C. C. 5 and 34 M. C. C. 441, were and are illegal and void, because the Commission exceeded its powers and jurisdiction and undertook to issue certificates of convenience and necessity for hybrid operations, part railroad and part motor carrier, under Part II of the Interstate Commerce Act, and further undertook to exempt such operations from the provisions of law requiring proof of public convenience and necessity (Sec. 206, 207), and to exempt such operations from compliance with the tariff and accounting provisions of Part II (Sec. 216 and 220), and failed and refused to conduct proper hearings and to receive evidence

[fol. 2050] upon which the required statutory findings under Section 5(b) of Part I (old Section 213 of the Motor Carrier Act) could be made, and made findings without evidence, and made negative findings when the statute requires affirmative findings, and generally disregarded the provisions of the National Transportation Policy with respect to fair and impartial regulations of and the preservation of the inherent advantages of motor carriers.

(Assignments of Error Nos. 1, 2 and 3.)

Point 2

The orders of the Interstate Commerce Commission, as aforesaid, were and are illegal and void because the Commission failed and refused to either assign the applications for hearing before properly constituted Joint Boards or to conduct the hearings itself as required by statute, and the Commission failed and refused to hear and consider material evidence bearing on convenience and necessity and denied appellants a fair and reasonable hearing.

(Assignments of Error Nos. 4 to 7.)

10/13/44.

J. Ninian Beall, Investment Building, Washington, D. C., Attorney for Appellants.

Brashears, Beall & Beasley, Investment Building, Washington, D. C., of Counsel.

[fol. 2051] [File endorsement omitted.]

[fol. 2052] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION BY INTERVENING DEFENDANTS OF ADDITIONAL PORTIONS OF THE RECORD TO BE PRINTED—Filed October 19, 1944

To the Clerk of the Supreme Court of the United States:

Counsel for Appellants having filed in this Court a document captioned "Designation of Record by Appellants" which Intervening Defendants are advised is intended to serve as Appellants' Designation of the Portions of the

Record to be Printed, Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants below, hereby designate as additional portions of the record to be printed, the following:

1. The entire record of testimony before the Interstate Commerce Commission, including those portions designated by Appellants, but exclusive of all exhibits, the printing, so far as practicable, to be arranged in the chronological order of the hearings at which the testimony was submitted, viz.:

Docket No. MC 86687, Sub No. 3, held June 11th and 12th, 1937,

Docket No. MC 86687 and MC 86687, Sub No. 1, held June 12th, 1937,

Docket No. MC 86687, Sub No. 7, held June 14th, 1937,

Docket No. MC 86687, Sub Nos., 2, 4, 5 and 6, held June 15th and 16th, 1937,

Docket No. MC 86687, Sub Nos. 9 and 10, held October 19th and 20th, 1937,

Docket No. MC 86687, Sub No. 8, held October 27th, 1937,

Docket No. MC 86687, Sub No. 15, held March 14th, 1938, [fol. 2053] Docket No. MC 86687, Sub No. 18, held June 22nd and 23rd, 1938,

Docket No. MC 86687, Sub No. 19, held January 23rd, 1939,

Docket No. MC 86687 and Sub Nos. 1 to 10 inclusive, 15, 18 and 19, held November 12th and 13th, 1941.

2. The portions of the Brief for Plaintiffs filed with the Court below set forth in subparagraphs (a) to (o), inclusive, of paragraph 4 of Intervening Defendants' Praecipe Designating Additional Parts of the Record to be Incorporated in the Transcript.

3. Testimony of R. W. Rogers beginning on page 19 and ending on page 35 of the transcript of the proceedings before the Court below on June 1, 1944.

4. This Designation of Additional Portions of the Record to be Printed.

Respectfully, W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants.

[fol. 2054] AFFIDAVIT OF SERVICE

STATE OF VIRGINIA,
City of Norfolk, ss:

Before me, a Notary Public in and for the State and City aforesaid, personally appeared Charles T. Abeles, who, being by me duly sworn, made oath and said that he served the foregoing designation by intervening defendants of additional portions of the record to be printed upon all parties to this cause by mailing a copy thereof to their respective Counsel, viz.:

J. Ninian Beall, Esq., of Brashears, Beall and Beasley, Investment Building, Washington 5, D. C.

Roland Rice, Esq., 1424 16th Street, N. W., Washington, D. C.

Samuel W. Shelton, Esq., Tenth Street Building, Richmond, Virginia.

Edward Dumbauld, Esq., Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Daniel H. Kunkel, Esq., Attorney Interstate Commerce Commission, Washington 25, D. C.

Chas. T. Abeles.

Subscribed and sworn to before me this 17th day of October, 1941. W. H. Wallace, Jr., Notary Public. My Commission expires April 13, 1947. (Notarial Seal.)

[fol. 2055] [File endorsement omitted.]

[fol. 2056] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—November 20, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument immediately following Nos. 507 and 508.

Endorsed on Cover: File No. 49,011 E. Virginia, D. C. U. S., Term No. 558. American Trucking Associations, Inc., Southern Motor Carriers, Rate Conference, Flamingo Truck Lines, Inc., et al., Appellants, vs. The United States of America, Interstate Commerce Commission, Legh R. Powell and Henry W. Anderson, Receivers of the Seaboard Air Line Railway Company. Filed October 6, 1944. Term No. 558 O. T. 1944.

P.V. 239

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

65 3307
Sup. Ct.

No. 558

AMERICAN TRUCKING ASSOCIATIONS, INC., SOUTHERN MOTOR CARRIERS' RATE CONFERENCE, FLAMINGO TRUCK LINES, INC., ET AL.,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, LEIGH R. POWELL AND HENRY W. ANDERSON, RECEIVERS OF THE SEABOARD AIR LINE RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

STATEMENT AS TO JURISDICTION

J. NINIAN BEALL,
ROLAND RICE,
SAMUEL W. SHELTON,
Counsel for Appellants.

BRASHEARS, BEALL & BEASLEY,
Of Counsel.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 285

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION, AND LEGH R. POWELL AND HENRY W. ANDERSON, RECEIVERS OF THE SEABOARD AIR LINE RAILWAY COMPANY, INTERVENOR,
Defendants

STATEMENT AS TO JURISDICTION

The appellants, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represent:

1. The Statutory Provisions Sustaining Jurisdiction

Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, Ch. 229, 43 Stat. 936, 938 (U. S. C. Tit. 28, Sec. 345), provides as follows:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> . . . . . .
>
> "(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes,' approved

October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

The Urgent Deficiencies Act of October 22, 1913, Ch. 32, 38, Stat. 208, 219-220 (U. S. C. Tit. 28, Sec. 41(28), 47 and 47a) confers jurisdictions upon the District Court of suits brought to enjoin, set aside, annul, or suspend "in whole or in part any order of the Interstate Commerce Commission," and with respect to review by the Supreme Court of decrees entered in such suits, provides as follows:

"A final judgment or decree of the District Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases."

2. Date of Decree and Date of Application for Appeal

The final decree sought to be reviewed was made and entered on July 21, 1944.

The application for appeal was presented on August 17, 1944, together with an Assignment of Errors and a Jurisdictional Statement.

3. Nature of Case and Issues Involved

The appellants, plaintiffs below, are common carriers by motor vehicle subject to Part II of the Interstate Commerce Act, and an association of motor carriers. The individual motor carriers operate, in part, in the same territory, in the southeastern states, served by the Seaboard Air Line Railway Company, and are in competition with that company. The Seaboard Air Line Railway Company filed

with the Interstate Commerce Commission, numerous applications for certificates of convenience and necessity to operate motor vehicles in over-the-road or line-haul service, and said applications were filed under Section 206 of Part II of the Interstate Commerce Act.

The Interstate Commerce Commission conducted a series of proceedings, beginning in 1937 and terminating in 1942, and finally issued to the Seaboard Air Line Railway the motor carrier operating rights which it had applied for.

A number of independent motor carriers, including appellants here, opposed the granting of motor carrier operating rights to the Seaboard Air Line Railway. Upon the exhaustion of their administrative remedies before the Interstate Commerce Commission, they filed their bill of complaint in the United States District Court for the Eastern District of Virginia against the United States and the Interstate Commerce Commission, to annul and set aside the orders of the Commission, wherein the Seaboard Air Line Railway had been granted rights to operate motor vehicles.

The Seaboard Air Line Railway petitioned to intervene in the proceedings before the District Court and the intervention was allowed.

The defendant, United States of America, answered and confessed error and prayed that judgment be entered for the plaintiffs.

The defendant, the Interstate Commerce Commission, answered and defended its orders.

Upon the hearing of the cause by the District Court, that court, by a majority opinion, gave judgment for the Interstate Commerce Commission on all of the issues presented.

The bill of complaint, in substance, raised the following issues:

(a) The Commission issued to the Seabord Air Line Railway what purports to be a certificate of convenience

and necessity to conduct motor carrier operations under Part II of the Interstate Commerce Act, but the transportation is performed by the railroad under railroad rates and tariffs filed under Part I of the Interstate Commerce Act. The revenues and expenses of the motor carrier operations conducted by the railroad are intermingled with the revenues and expenses of the railroad operations. Plaintiffs contended that the Commission misconceived its authority and was without jurisdiction and power to certificate a hybrid operation, part rail and part motor.

(b) Plaintiffs contended that the Commission, in issuing motor carrier certificates to a railroad, failed to apply the normal legal criteria for determining public convenience and necessity and issued such certificates merely on a showing of railroad convenience.

(c) Plaintiffs contended that the Commission failed to conduct a fair, full and reasonable hearing and denied protestants an opportunity to introduce evidence or cross-examine witnesses on pertinent issues and the Commission failed and refused to develop evidence essential for the statutory findings of public convenience and necessity.

(d) Plaintiffs contended that the Commission failed and refused to receive evidence or to develop evidence upon which it might make the required statutory findings on the issue of "restraint of competition," as required by law. (Section 5(a)(b) of Part I of the Interstate Commerce Act.)

(e) Plaintiffs contended that the Commission failed and refused to appoint properly constituted Joint Boards under Section 205(a) of Part II of the Interstate Commerce Act and also in the alternative, failed and refused to conduct the hearings itself.

4. Rulings Below

With respect to all of the issues raised the majority of the court below held that they were matters within the administrative discretion of the Interstate Commerce Commission. The dissenting opinion held for the plaintiffs.

5. Matters and Cases Relied Upon to Sustain Jurisdiction of This Appeal

This Court has never passed on any of the issues here presented.

In only one other case have the issues ever been passed upon by a District Court of the United States and then, in that other case, the District Court took a different view and reached a decision in conflict with the decision in this case. *Parker et al.* v. *United States of America,* U. S. D. C. Indiana, Indianapolis, Div., Civil Action No. 781, decided June 30, 1944.

In the *Parker case,* as here, the issues involved the proper legal criteria to be applied by the Commission in determining public convenience and necessity, where railroads were applicants for motor carrier rights and also, whether the Commission had jurisdiction and power to apply an entirely different test in the case of railroad applicants for motor carrier rights, as opposed to the test which the Commission consistently applied, where independent motor carriers were applicants for certificates of convenience and necessity.

In both cases, plaintiffs contended that Congress had placed greater conditions on railroad applicants for motor carrier rights than were applicable to independent motor carriers, and plaintiffs contended that the Commission had disregarded these safeguards which Congress had imposed and had in fact, granted certificates to railroads upon a

mere showing of railroad convenience, as distinguished from a showing of public convenience and necessity.

The District Court in the *Parker case* held, that the Commission had exceeded its powers and that its orders were void. Whereas, in the case here presented for review, the District Court concluded that such matters were committed wholly to the administrative discretion of the Commission and were not controlled by statutory limitations or restrictions.

This phase of the issue presented called for a review of the Commission's policy and a determination of whether the Commission has made distinctions which Congress did not make and has applied the proper criteria within the frame of the statute which the Commission administered. On these issues the case is similar to those passed on by the Supreme Court in *Eastern Central Motor Carriers Association* v. *United States*, — U. S. —, 88 L. ed. 431, decided February 7, 1944, and *Carolina Freight Carriers Corp.* v. *United States*, 315 U. S. 475, 86 L. ed. 971, decided March 2, 1942, in which cases this Court held that the Commission's reports did not contain a sufficient showing upon which it could be determined whether the Commission had applied proper criteria, and the Commission was therefore reversed.

There was and is presented the further question as to whether the Commission made the requisite statutory findings, or made findings without evidence, or substituted conclusions for findings, or made negative findings, and on that issue the case is similar to the case of *Yonkers* v. *United States*, — U. S. —, 88 L. ed. 241, decided January 3, 1944; *United States* v. *Chicago M. St. P. & P. R. Co.*, 294 U. S. 499, 79 L. ed. 1023; *Florida* v. *United States*, 282 U. S. 194, 85 L. ed. 291; *United States* v. *B. & O. R. Co.*, 293 U. S. 454, 79 L. ed. 587, in which cases the Supreme Court found that the Commission had not made the proper findings.

The findings of fact and conclusions of law in the case of *Parker et al.* v. *United States, et al. supra,* were as follows:

"In the District Court of the United States of America for the Southern District of Indiana, Indianapolis Division

"Harry A. Parker DBA-Parker Motor Freight, et al.
Plaintiffs

v.

United States of America, et al., Defendants

Civil Action No. 781

"Special Findings of Fact

"Pursuant to Rule 52 of the Rules of Civil Procedure, this Court now states its Special Findings of Fact:

"I

"This is a suit brought under U. S. Code, Title 28, Chap. 2, Sec. 41(28) and Sec. 43-48 inclusive to set aside an order made September 25, 1943 by the Interstate Commerce Commission authorizing the issuance of a motor carrier certificate of convenience and necessity in a proceeding entitled The Willett Company of Indiana, Inc., Extension—Fort Wayne—Mackinaw City, Michigan, Docket No. MC-2315 (Sub No. 6). The plaintiffs in this suit are motor carriers who are competitors of the above-named applicant with respect to the operations authorized by the proposed certificate and associations of motor carriers.

"II

"An application was filed with the Interstate Commerce Commission by The Willett Co. of Indiana, Inc., a subsidiary of the Pennsylvania Railroad on September 8, 1941 under the provisions of Section 207 (a) of Part II of The Interstate Commerce Act. This application was for authority to conduct seven separate

operations on as many different routes paralleling the lines of the Pennsylvania Railroad from Fort Wayne, Indiana to Mackinaw City, Michigan. Numerous competing motor carriers intervened and opposed the granting of the authority sought. Hearings were held and a proposed report was filed. Exceptions and a Petition for Rehearing and Reconsideration were denied. Suit to set aside said order was filed on February 21, 1944. Answers were duly filed on behalf on the United States, the Interstate Commerce Commission, and intervenors. Argument was had and the cause submitted on final hearing on April 28, 1944. At the hearing plaintiff introduced in evidence a certified copy of the record before the Interstate Commerce Commission. This was all of the evidence in the case.

"III

"The operations proposed are motor carrier operations which would be competitive with existing motor carrier service. The railroad, however, refused to make use of any of the existing lines. The applicant's proof concerned an alleged improvement in railroad service. No proof was made or offered by the applicant or presented in evidence that present highway common motor carrier transportation service by duly certificated carriers operating in interstate or foreign commerce and serving the points proposed to be served by the applicant was or would be inadequate to serve the public need therefor. Proof was presented before the Commission by the plaintiff and other protestants concerning the adequacy of existing common motor carrier service. There was no substantial evidence to prove public convenience and necessity.

"SHERMAN MINTON,
Judge, United States Circuit Court of Appeals,
"LUTHER M. SWIGERT,
Judge, United States District Court;
"ROBERT C. BALTZELL,
Judge, United States District Court.

"Dated this 30th day of June, 1944.

"Conclusions of Law

"Upon the above and foregoing Special Findings of Fact, the Court now states its Conclusions of Law, as follows, to-wit:

"I

"The Court has jurisdiction of the subject matter and of the parties in this cause of action.

"II

"The applicant did not meet the statutory requirements and the Interstate Commerce Commission failed to exact from applicant, as a railroad subsidiary, the requisite proof to establish public convenience and necessity.

"III

"There was no substantial evidence to support the order of the Interstate Commerce Commission that public convenience and necessity requires the issuance to applicant of a certificate of public convenience and necessity authorizing operations by motor vehicle as a common carrier of property over the routes involved, and the order is, therefore, illegal and void and should be permanently enjoined.

"SHERMAN MINTON,
Judge, United States Court of Appeals;
"LUTHER M. SWIGERT,
Judge, United States District Court;
"ROBERT C. BALTZELL,
Judge, United States District Court.

"Dated this 30 day of June, 1944."

There was and is presented the question as to whether the Commission made the required statutory findings with respect to "restraint of competition" as required by Section 5(b) of Part I, and on this question, plaintiffs contended that the Commission substituted conclusions for findings, or, if the conclusions be called findings, then such

findings were made without evidence, and in connection therewith the Commission failed to perform its statutory duties.

There was and is presented the question as to whether the Commission accorded appellants here, protestants before the Commission, a full, fair and reasonable hearing in that the Commission, over the objections of the protestants, conducted the hearings in piece-meal fashion, refused to consolidate the hearings and thereby deprived appellants of an opportunity to show the manner in which they would be adversely affected by the operations which the railroads proposed to conduct.

There was and is presented the question of a proper hearing, in that appellants were denied the privilege of cross-examining applicant's witnesses on matters pertinent to determination of issues of public convenience and necessity and restraint of competition. Plaintiffs contended and still contend, that under these circumstances the Commission had not only denied protestants a fair hearing but had foreclosed itself from the benefits of a record essential to a determination of the finding required by law, and having particular reference to the issues of public convenience and necessity under Section 206(a) of Part II and restraint of competition under Section 5(b) of Part I.

There was and is presented the further question as to the proper construction to be given Section 205 of Part II, with respect to the composition of Joint Boards where the applications disclosed that more than three states are involved in the physical operations of motor vehicles and where the traffic involved was to be originated or terminated in all of the states served by the applicant. None of these latter questions have ever been passed on by the Supreme Court.

It is respectfully submitted that the Supreme Court has jurisdiction of this appeal by virtue of the statutory pro-

visions first herein cited and that the issues presented are substantial.

Washington, D. C., August 16, 1944.

Respectfully submitted,

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[Stamp:] Filed Jul. 17, 1944. C. K. Moran, Clerk

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 285

AMERICAN TRUCKING ASSOCIATIONS, INC., et al., *Plaintiffs*,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants*

J. Ninian Beall, Esq., S. W. Shelton, Esq., and Roland Rice, Esq., Counsel for Plaintiffs.

Edward Dumbauld, Esq., Special Asst. to Atty-Gen. of U. S., and John V. Cogbill, Esq., Asst. U. S. Attorney, Counsel for the United States of America.

Daniel H. Kunkel, Esq., Counsel for Interstate Commerce Comm.

Thos. L. Preston, Esq., and Charles T. Abeles, Esq., Counsel for Receivers of Seaboard Air Line Ry. Co., Intervenors.

DOBIE, *Circuit Judge:*

This is a civil action (28 U. S. C. A. §§41(28), 44, 45, 45(a), 46, 47, 48) in which we are asked to set aside certain orders of the Interstate Commerce Commission (hereinafter called the Commission) and to grant certain incidental relief. These orders of the Commission granted to Legh Powell, Jr., and Henry Anderson, Receivers of the Seaboard Air Line Railway Company (hereinafter collectively referred to as Seaboard) certificates of public convenience and necessity, authorizing Seaboard to engage in interstate operations as a motor carrier over 14 routes in the States of Virginia, North Carolina, South Carolina, and Florida. Plaintiffs are the American Trucking Associations, Inc., (an organization formed in the interest of the highway trucking industry), and 6 motor carriers operating over the routes covered by the challenged certificates.

Seaboard, by intervention, (28 U. S. C. A. §45(a)) has been joined as a party defendant.

The 14 applications of Seaboard for certificates, (with which we are concerned) were filed by Seaboard with the Commission (pursuant to the provisions of the Interstate Commerce Act, Part II, §206, 49 U. S. C. A. §306) at various times from February 23, 1937, to August 15, 1938. In due course, the Commission referred each application (severally and individually) to a Joint Board, composed of one member from each State in which there was any part of the operation covered by the specific application (49 U. S. C. A. §305(a)).

The Joint Boards, after hearings on each of Seaboard's applications, issued reports, and appropriate certificates were, in every instance, granted by the Commission, subject to certain restrictions. One of these restrictions limited Seaboard's motor service to that which was strictly auxiliary to Seaboard's rail operations—that is, all transportation by motor was forbidden under the certificates unless there was a prior or subsequent shipment, in each instance, by rail. Seaboard, contending that this prior-or-subsequent-rail-haul restriction seriously impaired the value and utility of the certificates, petitioned the Commission for a rehearing. This was granted by the Commission and the case was re-opened only for oral argument on this condition. Then the Commission eliminated the compulsory-rail-haul condition from the certificates and substituted therefor a so-called "key-station-plan", which restricted Seaboard's motor service in connection with the designated key-points. Later again Seaboard sought and obtained another rehearing, limited to modification of the key-points as these had been prescribed by the Commission. At this juncture, the Antitrust Division of the Department of Justice intervened, claiming that Seaboard's motor operations would bring about a monopoly and strangulation of the independent motor trucking industry. This stage of the proceedings marks also the initial appearance of the American Trucking Associations, Inc., one of the plaintiffs in the instant civil action. The Commission modified certain portions of the key-point restrictions.

We now proceed to consider the questions raised in this case which we deem are of sufficient merit to deserve discussion.

1. Constitution of Joint Boards—Consolidation of the Individual Applications

Plaintiffs vigorously attack the assignment of each application to a Joint Board, composed of one member from each State in which a motor service was sought in that application. This procedure satisfied the Motor Carrier Act, Part II, §205(a) and followed a well-established administrative practice. See United States v. American Trucking Associations, Inc., 310 U. S. 534. In the absence of fraud (which is discussed later), the Commission, in determining the constitution and membership of the Joint Board, has consistently followed the scope of the proposed operations as these operations are designated and described in the application. See Argo and Collier Truck Lines Common Carrier Application, 27 M. C. C. 563, 566; and Atlantic Coast Line Railroad Company Extension of Operation, 30 M. C. C. 490, 491-2. Courts should give due weight to long continued administrative practice. See United States v. Moore, 95 U. S. 760; Norwegian Nitrogen Co. v. United States, 288 U. S. 294, 315. The Commission has often pointed out the inherent administrative difficulties in enforcing the Motor Carrier Act under any other interpretation. See 17 M. C. C. 413, 416-17. Even when minor defects in the composition of the Joint Boards do appear, the courts have been (and should be) slow to set aside an order of the Commission on this ground. Empire Trails, Inc. v. United States, 53 F. Supp. 373; North Coast Transportation Co. v. United States, 54 F. Supp. 448.

Section 205(a), Part II, of the Motor Carrier Act provides, in part:

> "The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three states, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be

conducted involve more than three states, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, * * *. The joint board to which any such matter is referred shall be composed solely of one member from each state within which the motor carrier or brokerage operations involved in such matters are or are proposed to be conducted * * *. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon; * * *".

Early and late, before the Joint Boards and before the Commission, timely motions and petitions were filed, praying for a stay of the proceedings and for a consolidation of the several applications, so that these applications could be referred to, and considered by, "properly constituted" Joint Boards, consisting of one member from each State in which an operation was desired under any of the applications. These motions and petitions for consideration were denied by the Joint Boards and the Commission.

Plaintiffs contend that this action was arbitrary and capricious and forms a ground for the setting aside by us of the Commission's orders. We find no merit in this contention. Such motions to consolidate are addressed to the sound discretion of the Commission. And we can discern in this record no warrant to justify us in holding that here the Commission has either abused this discretion or acted arbitrarily and capriciously. From all the testimony before it, the Commission was in a peculiar position to judge accurately whether the service sought under totality of the applications was of such unified nature and such comprehensive scope as to call for consolidation of these applications and for their reference to a Joint Board which would be

differently constituted. It is not without importance, in this connection, that, after these certificates were issued, some of the services thereunder authorized have never been inaugurated, while others, after being commenced by Seaboard, were subsequently abandoned.

2. Exclusion of Evidence—Fair Hearing

Protesting motor carriers next complain of the refusal of the Joint Board to receive and consider certain evidence offered by protestants. As a result, we are told: "Every effort of plaintiffs to have the proceedings conducted under any semblance of a fair, reasonable and statutory hearing was summarily rejected by the Commission."

This complaint of plaintiffs is cognate to the Commission's refusal to consolidate the several applications of Seaboard. This proferred evidence covered a wide field and much of it might have been relevant had the Commission consolidated the applications. This evidence seems to have been excluded by the Joint Boards on the ground that each Joint Board was necessarily limited to deciding upon, and only upon, the particular application, or applications, before that Board.

Some evidence on the points which the protestants sought to develop did filter into the hearings before the Joint Boards. The Commission had before it the reports of all the Joint Boards. When, therefore, the Commission decided against consolidation; against a reopening of the case and against a rehearing of the matters, with the applications considered together as a whole, we think this contention of plaintiffs falls to the ground. Then, too, it is open to very serious question whether this excluded evidence would have, if admitted, influenced the decisions of the Commission.

3. Use of Improper Criteria as to Public Convenience and Necessity

Very great stress is laid by plaintiffs on the contention that the Commission used false and improper criteria in arriving at its finding of public convenience and necessity

in favor of Seaboard. It is urged upon us that the Commission substituted railroad economy and convenience for public necessity; that the Commission unduly favored Seaboard by characterizing the "hybrid" combination of rail and motor service as new and unique; and that the Commission utterly disregarded the clear fact that the territories in question were fully and completely served by existing motor carriers.

The simple answer to the first point is that the Commission did not base its finding of public convenience and necessity solely or even primarily upon railroad economy and convenience. That factor (quite properly, we think) was merely considered by the Commission as one (among many) elements that influenced its decision.

The second point is not to be answered as a question of juristic semantics—whether the co-ordinated rail and motor service is in every respect a "new" service. All that we need hold on this point is that the Commission could (as it did) consider that the proposed motor service contemplated in the applications of Seaboard was a coordinated rail-motor service and, on that account, differed rather widely from the application of a pure motor carrier (rendering exclusively motor service) and also from an application by a railroad for permission to inaugurate motor service in a territory and field quite separate and divorced from its rail operations. This appears to have been a well settled policy of the Commission. See Kansas City Southern Transport Co., Inc.—Common Carrier Application, 10 M. C. C. 221, 235; Illinois Central Railroad Co.—Common Carrier Application, 12 M. C. C. 485, 495. Ample warrant for this, we think, can be found in many cases. We content ourselves with an extract from a very recent case decided by the United States Supreme Court.

Thus, in Thomson v. United States, 321 U. S. 19, 20-21, Mr. Justice Murphy said:

> "The motor trucks transport less than carload lots of freight in complete coordination with the rail service. The railroad instituted this additional method of transportation in order to furnish an improved and more convenient freight service to the public in certain

areas of light traffic and in order to curtail car mileage and way-freight service. Motor vehicle transportation, in other words, is merely a new method of carrying on part of its all-rail freight business in which it had been engaged for many years."

The record does not support the contention that the Commission disregarded the ability of the independent motor carriers to furnish adequate service in the territories covered by Seaboard's applications. What the Commission did was to contrast this independent motor service with Seaboard's proposed coordinated motor-rail service, and then, in the light of this comparison, to weigh and appraise the elements and factors in each of the two types of service. There is ample warrant in the record for the Commission's finding that, under proper criteria reasonably applied, public convenience and necessity would be best served by granting these certificates of public convenience and necessity to Seaboard.

4. Monopoly

The Commission found that the granting of these certificates to Seaboard would not create, or tend to create, a monopoly. And, further, the Commission stated: "Nor does it appear from the records made in these cases that there will be any great diversion of traffic from independent motor carriers," 17 M. C. C. 432. "Nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor carrier field." 34 M. C. C. 444. There is ample evidence to support these findings. And, as the Commission aptly stated: "One competitive carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest." 28 M. C. C. 10. We call attention again (as against the contention that the Seaboard contemplated a unified service paralleling almost its entire line for the purpose of creating a monopoly) that some of the services authorized by the certificates

have never been inaugurated, while others of these services, once inaugurated, have been subsequently abandoned.

It seems clear that the enforcement of the federal anti-trust laws is not a primary function of the Commission nor can any decision of the Commission preclude an action in the federal courts for the enforcement of these laws. This whole situation, involving the inter-relations of the Commission and the courts as to anti-trust legislation, is discussed at some length in the opinion of Mr. Justice Rutledge in McLean Trucking Co. v. United States, 321 U. S. 67.

5. Laches.

Seaboard has interposed the defense of laches as a defense to this civil action. The basis of this defense is that plaintiffs have unduly delayed in bringing this action, that, in the interval between the granting of these certificates and the institution of this action, Seaboard has acquired equipment, spent money and made many changes in its transportation facilities.

It was understood between counsel that, at the hearing before us, the record before the Commission would not be introduced and that no oral evidence would be offered. Counsel for plaintiffs, however, insisted on introducing the Commission record, and no objection was made to this. Seaboard then claimed that it must offer some oral evidence on the changes in its facilities which had been made in the period between the granting of the certificates and the institution of the instant civil action. Counsel for plaintiffs and for the United States strongly objected to this evidence. One official of the Seaboard was permitted to testify and a motion to strike this evidence was made by counsel and taken under advisement by the Court.

We prefer to base our decision in this case upon the broader and more important considerations previously discussed in this opinion. Accordingly, we do not feel called upon to pass upon either the validity of the defense of laches or the propriety of the oral evidence heard by this Court.

6. Fraud.

Counsel for plaintiffs have interposed into this case a charge of fraud on the part of Seaboard. We are euphemistically told, though, that fraud here is used as a legal concept and that any intention of charging any person connected with Seaboard with improper personal conduct is disclaimed. It is claimed, however: "The Commission exceeded its power and jurisdiction and acted arbitrarily and capriciously * * * In considering false and fictitious showings of convenience and necessity, deliberately fashioned by the applicant."

We might point out a slight inconsistency, in this connection, found in the complaint filed by plaintiffs. Thus, at one point in the complaint it is alleged: "The separate applications had the effect of concealing the true nature of the applications and of evading the statutory requirements for a hearing." While, in another place, the complaint states: "The extent and scope of the proposed operations were disclosed to the Commission through numerous applications."

The Commission took pains to state:

> "We now have the entire situation presented by the several applications before us in all of its aspects, following full and complete hearings." (17 M. C. C., 417.)

We content ourselves by observing that we find nothing whatever in this record either to warrant or to substantiate this charge, even in its euphemistic, legal connotation.

7. The Position of the United States in this Case.

In every civil action to set aside an order of the Interstate Commerce Commission, the United States is, of course, a necessary party. When counsel for the United States appear and take part in the case, it is usually for the purpose of defending the order of the Commission, a coordinate branch of the federal government. In the instant case, however, counsel for the United States have confessed error, have admitted the allegations of the complaint and have asked this Court to grant the desired relief to plaintiffs.

Seaboard's counsel tell us that the United States should not be heard in this anomalous role, which virtually amounts to stultification. See United States v. United States Gypsum Co., 53 F. Supp. 889.

We hold that the United States cannot confess error so as to make it binding upon us to grant the relief desired by plaintiffs. In McLean Trucking Co. v. United States, 321 U. S. 67, 69, error was confessed by the United States, yet the Supreme Court affirmed the decree of the three-judge District Court, refusing to set aside orders of the Commission. On the other hand, we were glad to consider the brief and oral argument of counsel for the United States, specially representing the Antitrust Division of the Department of Justice. The contentions advanced by these counsel we find to be lacking in substantial merit.

8. Separat Tariffs and Accounting for Motor Traffic

Plaintiffs complain that the Commission's order which failed to require Seaboard to file separate tariffs, and to keep separate accounts, for its motor traffic (apart from its rail operations) is a violation of the Interstate Commerce Act, Part II, §§217, 220, 49 U. S. C. A. §§317, 320, and constitutes unfair discrimination in favor of Seaboard and against plaintiffs.

These are matters primarily entrusted to the sound discretion of the Commission. See United States v. Trucking Co., 310 U. S. 344, 352; Board of Trade v. United States, 314 U. S. 534. And we should not here attempt to substitute our discretion (whatever action that may dictate) for the discretion vested in the Commission. It is conceded that this Court has no power to direct the Commission to issue an order directing Seaboard to file these separate tariffs and to keep these separate accounts. If, in actual practice, it should develop that such discrimination is thereby effected, an ample administrative remedy is afforded in the shape of an application to the Commission. See Texas & Pacific Railway Co. v. Abilene Cotton Oil Co., 204 U. S. 426.

9. Reflections on the Interstate Commerce Commission

The printed brief of counsel for plaintiffs abounds in slurring remarks and exceedingly uncomplimentary references to the Commission. We quote a few of these. "To escape this dilemma, they invented the doctrine of 'new service'." "This hybrid monstrosity which is exclusively the brain child of the Interstate Commerce Commission * * * " "Truly the Commission's generosity to the railroads knows no bounds." "The Commission thinks it knows more about what is good for the country than Congress does. Therefore, the Commission has determined to handle the matter according to its own notions." "The Commission having decided to legislate in derogation of the will of Congress, it now goes through the fiction of a hearing and refuses to hear evidence." "The hearings which the Commission now holds on any railroad application for motor carrier rights are a farce. The matter has reached the point where no possible evidence could serve to show adequate existing services. No possible evidence could serve to overcome railroad desire and railroad convenience." "The 'hearings' are in effect, ex parte."

We find nothing in this record (or, for that matter, in the history of the Commission) that would justify such unrestrained language about an administrative body of rather unusual age and somewhat exceptional distinction. The language, we think, adds nothing to either the strength of the case of the plaintiffs or to the credit of their counsel.

10. Presumptive Validity of Commission's Order

A long line of cases upholds the presumptive validity which attaches to the determination of an administrative tribunal, when the determination is subjected to review by the courts. See Rochester Telephone Corp. v. United States, 307 U. S. 125, 145; Helvering v. Clifford, 309 U. S. 331, 336; Gray v. Powell, 314 U. S. 302, 312; Federal Power Commission v. Hope Natural Gas Co., 320 U. S. 591, 602; Dobson v. Commissioner, 320 U. S. 489. These principles have been affirmed, and again applied to the Interstate Commerce Commission, by the Supreme Court in two very recent

cases. Thus, in McLean Trucking Co. v. United States, 321 U. S. 67, 88, Mr. Justice Rutledge said:

> "If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported by evidence, it is not our function to upset its order."

And Mr. Justice Jackson remarked in Hudson and Manhattan Railroad Co. v. United States (decided by the Supreme Court May 29, 1944):

> "It is not for the Court to set aside, without legislative command, its slow-wrought general principles which protect the finality and integrity of decisions of administrative tribunal."

For the reasons assigned, the prayer of the plaintiffs that we set aside the Commission's orders will be denied, judgment will be entered for the defendant, Interstate Commerce Commission, and the action of plaintiffs will be dismissed.

Action dismissed.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND

AMERICAN TRUCKING ASSOCIATIONS, INC., et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

PAUL, District Judge, dissenting:

I am unable to agree with the conclusions reached by my colleagues in this case. I am of opinion that the contentions of the protestant motor truck operators, in which they are joined by the United States, are well founded in the following respects:

1. That by the refusal of the Commission to hear and consider evidence which the plaintiffs offered and which

was pertinent to the questions before the Commission, a full and fair hearing was denied and to that extent the action of the Commission was unreasonable and arbitrary.

2. That the action of the Commission was based upon a mistake as to, or a failure to apply, the proper statutory standards in its determination of "public necessity and convenience".

I

On the first of these questions, the procedure taken in the case is significant. I understand it to have been substantially as follows:

The applications made by the railroad were some fourteen in number each relating to a segment of its existing rail line. No one of the routes applied for extended into more than two states. But many of these segments adjoined and in the aggregate the applications paralleled a large portion of the rail line. References of the several applications were made to joint boards, each of which considered only the route named in the particular application before it and all of which refused to hear evidence touching the effect of the operations made possible through the aggregated applications.

Upon the reports of the joint boards, the Commission granted the applications, subject to the condition (Condition 3) that shipments transported by the applicant's truck operators should be limited to those moving on a through bill of lading covering a prior or subsequent movement by rail. Upon petition of the railroad the Commission eliminated the condition requiring prior or subsequent rail haul and replaced it with a restriction whereby the motor transportation was limited by certain "key-points" on the railroad line. The railroad then petitioned for certain changes in the key-points as originally prescribed by the Commission. On a hearing on this latter petition all of the applications were consolidated, but the hearing was limited solely to the question of the modification of condition 3. At this hearing the Department of Justice sought to present evidence as to the effect of the railroad's motor truck operations with particular regard to conditions of competition.

It later sought to have the case reopened and reheard for the same purpose. Both efforts were ineffectual. It appears that at an earlier stage of the proceedings the protesting motor carriers had sought to have all of the applications consolidated in order that the issue of public convenience and necessity might be considered from the standpoint of the unified route created by the aggregate of the several applications, on which the protestants desired to present testimony. This request for consolidation was refused. The Commission evidently approved each of the different applications on the strength of the hearings and reports by the joint boards, where, in each instance the joint board had limited its consideration to the terms of the particular application before it and had refused to receive evidence touching the effect of the combined applications.

Whatever purpose the railroad had in putting its plans in the form of fourteen separate applications need not be considered. The fact is that when the various applications were filed, practically simultaneously, it was evident to the Commission that the plan contemplated various motor routes which operating together would cover a continuous route paralleling a large part of the railroad. By the removal of condition 3, the motor service was opened to traffic having no prior or subsequent rail haul and it was made possible to transport shipments entirely by truck from a point of origin in one route to a destination on the line of a contiguous route. The result, so it seems to me, was to establish a service in direct competition with existing truck routes. The Commission, however, proceeded on a theory that each abbreviated route applied for stood alone and refused to consider evidence showing the relationship between them and the effect of their combined operation. It acted solely upon a theory and ignored the actual facts before it.

It would seem, therefore, that at no stage of this proceeding were the protesting motor carriers permitted to present the testimony which they deemed pertinent and essential on the issue of public convenience and necessity. This testimony bore upon the relationship among the various truncated routes for which the railroad had applied and

upon the practical effect of the assembled operation. The Department of Justice was similarly denied an opportunity to present evidence as to the effect of these combined operations in unduly restraining competition. The effect of this latter denial is emphasized by the fact that the effect upon competitive conditions could not possibly be determined except by consideration of the operations as a whole and by the further fact that under the statute (Act of Sept. 16, 1940, 54 Stat. 906; 49 U. S. C. A. 5 (2) (b)) the Commission is required to find that granting of the application will be to the public advantage and will not unduly restrain competition.

If is true that the Commission made a finding of public convenience and necessity, but such a finding is in any case a conclusion supposedly based upon consideration of existing facts. I am not unmindful of the weight to be given to the findings of the Commission, but this presumes that such findings are the result of a full and fair hearing and consideration of all pertinent evidence offered bearing upon the issue before the Commission; a hearing at which both sides have an opportunity to be heard. The statement in the majority opinion that the excluded evidence, even if admitted, would probably not have influences the decision of the Commission, does not satisfy the situation. The protesting parties were entitled to be heard. I am not saying that the Commission reached an erroneous conclusion, nor that if the excluded testimony had been heard a different conclusion would have been reached. Perhaps the finding would have been the same. But in such case it would have been the result of the full and fair hearing which the law contemplates and which, in my opinion, the protestants have never yet had.

II

I am further of opinion that in finding that the public convenience and necessity would be served by approval of these applications, the Commission failed to apply the proper criteria for the determination of that question.

Without discussing it in detail it appears to me that the record discloses that consideration of these applications was from the standpoint only of whether the Seaboard would

thereby be able to handle its freight traffic in a manner more economical and convenient to it. The applications were made by the railroad in the belief that by the use of a motor truck service it could handle certain classes of traffic with greater convenience and economy and it was upon this basis that the certificates were granted. I do not take it that this satisfies the requirement that it is the public convenience and necessity which must be served.

Congress undoubtedly has recognized the existence of the various modes of transportation and sought to preserve the integrity and the advantages of each, without discriminations, preferences or advantages among them. A railroad has no authority, merely by the fact that it is a common carrier, to modify its method of carriage to that of a carrier by motor truck. When it seeks to do so no reason is seen why it is not subject to the same requirements as any other applicant for such privilege. In such case the test is not whether the railroad can carry on its existing business with greater economy and efficiency by the changed method of operation, but whether there is a public need for the creation of the new service. It is argued by the applicant that the term "public convenience and necessity" is generic, leaving to the Commission the widest latitude for its definition in the unlimited variety of circumstances which it may face. Without disputing this general statement it is evident that the phrase comprehends, not the needs of the applicant, but the needs of the community, the public by whom and to whom freight is shipped, and which presumably is indifferent to the method of transportation so long as it has some method which is as adequate and convenient as any other.

That the Commission did not apply these standards is in effect admitted by it in its brief, where it is argued:

> "The fundamental error into which plaintiffs fall is the assumption that the service proposed by the railroad is a like and competitive service to that presently rendered by the truck operators along the route sought by the railroad, and consequently the application should have been governed by the same criteria as obtain where a new motor carrier seeks to invade a

territory already occupied by existing motor carriers. In the latter instance questions of adequacy of existing service, the competitive effect of a new service, estimated traffic, and the ability of the communities served to support the new enterprise are pertinent issues upon which the evidence to be introduced by the plaintiffs might have had bearing. But these applications did not seek to establish a new and like transportation service; they sought merely authority to establish new methods of *operation* to provide a service equivalent to that which the railroad was already under a duty to render."

This is also an admission that the Commission did not consider the adequacy of existing service or the competitive effect of the new service in reaching its conclusions. It seems to me that this is exactly what the Commission should have considered in determining the question of public convenience and necessity.

It is evident that the two matters in which the Commission was in error are interrelated. It failed to apply the proper standards for detemining the question of public convenience and necessity and, therefore, refused to hear testimony bearing upon the standard which it had rejected. These errors were not in findings of fact, which we might properly refrain from reviewing. They were errors in the application of the law which, as I see it, require that the prayer of the complaint be granted. It is possible that upon a hearing applying the proper standards by which these applications should be judged and at which all pertinent evidence is considered the Commission would still be of opinion to approve them. But until this is done the orders granting the certificates should not be allowed to stand.

—— —— *District Judge.*

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BEFORE THE

Supreme Court of The United States

October Term, 1944

No. 558

AMERICAN TRUCKING ASSOCIATIONS, INC., et al,
Appellants,

v.

UNITED STATES OF AMERICA
AND THE
INTERSTATE COMMERCE COMMISSION,
Appellees.

BRIEF OF AMERICAN TRUCKING ASSOCIATIONS, INC., et al. APPELLANTS.

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BEFORE THE

Supreme Court of The United States

October Term, 1944

No. 558

AMERICAN TRUCKING ASSOCIATIONS, INC., et al,

Appellants,

v.

UNITED STATES OF AMERICA

AND THE

INTERSTATE COMMERCE COMMISSION,

Appellees.

BRIEF OF AMERICAN TRUCKING ASSOCIATIONS, INC., et al APPELLANTS

OPINION OF THE LOWER COURT

The opinion of the United States District Court for the Eastern District of Virginia appears, beginning at page 206 of the record and is reported in 56 Fed. Supp. 394.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court arises under Sec. 228 of the Judicial Code, 28 U. S. C. A. 345. This Court noted jurisdiction on November 20, 1944.

STATEMENT OF THE CASE

This action arose from a suit to set aside certain orders of the Interstate Commerce Commission. The Commission, in a long series of proceedings, issued certificates of public convenience and necessity authorizing the Seaboard Air Line Railway Company to engage in extensive motor carrier operations. The motor carrier operations which the Seaboard was authorized to conduct involve the same territory served by appellants and will compete with appellants in their motor carrier operations.

Appellants, conceiving themselves to be injured, seek to have set aside the authority which the Commission granted the Seaboard. The grounds for such complaint involve in general: (a) jurisdiction and power, (b) proper forum, (c) reasonable hearings, (d) evidence to support findings, (e) lack of findings, and (f) exemptions from statutory provisions.

The Seaboard Air Line Railway intervened in support of the Commissions orders. The defendant, the United States answered, admitted the facts alleged by plaintiffs and confessed error.

The court below by majority opinion sustained the Commission on all points.

STATUTES INVOLVED

The statute involved is the Interstate Commerce Act, 49 U. S. C. A., and particularly:

National Transportation Policy, 54 Stat. 899, 49 U. S. C. A. 901.

Acquisition of motor carriers by railroads, Sec. 5(b), 49 U. S. C. A. 5(b).
Jurisdiction of Joint Boards, Sec. 205, 49 U. S. C. A. 305.
Certificates of Convenience and Necessity, Sec. 206, 207, 49 U. S. C. A. 306, 307.
Procedure, Sec. 17, 49 U. S. C. A. 17.
Publication of Tariffs, Sec. 216, 217, 49 U. S. C. A. 316, 317.
Accounting, Sec. 220, 49 U. S. C. A. 320.

In brief, these statutory provisions are involved in this case in the following respects:

(a) The Transportation Policy, recognized the motor carrier industry as a separate and independent mode of transportation and provided for fair and impartial regulation of all transportation agencies. Appellants contend that the Commission has, contrary to the Congressional intent and directives, sought to integrate railroad and motor transportation to the purpose and end of promoting integrated transportation systems under single ownership, and whereby motor transportation is to become merely a subordinate facility to be used by railroads for their convenience. Appellants further contend that pursuant to the policy adopted and applied by the Commission, its administration of the law has become moulded in a pattern which is preferential to railroads and discriminatory against motor carriers.

(b) The statutory provisions governing the acquisition of motor carriers by railroads (Sec. 5(b)) provides for certain factual findings. Appellants contend that the Commission has substituted its general policy in lieu of the specific factual findings required by law.

(c) The sections having to do with the issuance of certificates of convenience and necessity (Sec. 206, 207) relate

to public convenience and necessity. Appellants contend that the Commission has substituted its general policy for the usual and normal criteria of public convenience and necessity and as a result, it issues motor carrier certificates to railroads on a bare showing of railroad convenience.

(d) Motor carriers operating under certificates of convenience and necessity are required to file motor carrier tariffs (Sec. 216, 217). Appellants contend that the Commission has exempted motor carriers which are directly owned by railroads, from filing motor carrier tariffs and thereby exceeds its authority and unlawfully discriminated against independent motor carriers, including appellants.

(e) Motor carriers operating under certificates of convenience and necessity are required to file various motor carrier accounting reports (Sec. 220). Appellants contend that the Commission has exempted motor carriers which are directly owned by railroads from keeping motor carrier accounts and thereby exceeded its authority and unlawfully discriminated against independent motor carriers, including appellants.

(f) The hearings contemplated by the Act (Sec. 17) are fair and reasonable hearings. Appellants contend that the Commission has adopted the policy of granting certificates of convenience to railroads, and that in substance and effect, it now limits the evidence to that which establishes railroad convenience, and excludes evidence bearing on public convenience, the effect on competing carriers, and restraint of competition.

(g) Certain statutory requirements were made with respect to matters which must be referred to Joint Boards for hearing and further provisions were made with respect to the composition of Joint Boards (Sec. 205 (b)). Appellants contend that the Commission disregarded these statutory requirements and failed and refused to either

hear the applications or to refer them to a properly constituted Joint Board.

SUMMARY OF COMPLAINT

The suit was commenced by complaint filed October 21, 1943 (R. 1).

Paragraph V (R. 7) charges error by reason of the failure of the Commission to either conduct the hearing itself on the several applications of the Seaboard or to refer said applications to a properly constituted Joint Board.

Paragraphs VI to IX (R. 10-15) charge error by reason of the failure and refusal of the several Joint Boards to conduct proper hearings; the failure and refusal of the Commission to consolidate the applications in order that a proper hearing might be conducted; and the issuance of a certificate by Division 5 of the Commission and by the full Commission, without having conducted a proper hearing and without having received evidence upon which findings required by statute might have been based.

Paragraph X (R. 15) charges error in that upon petition of the Seaboard the full Commission reversed Division 5 by abolishing certain conditions which Division 5 had imposed, and substituted new and different conditions without a hearing and without any evidence upon which the findings required by statute might have been made.

This paragraph also charges error in that upon reopening the proceedings for further modification of the conditions which the full Commission had imposed, the Commission, for the first time, consolidated the applications for hearing (by the Commission as distinguished from Joint Boards), but so restricted the scope of the hearing that protestants, appellants here, were further denied an opportunity to present the evidence which they

had sought to have the record show from the beginning of the proceedings.

Paragraph XI (R. 16) charges error in that upon the consolidation of the several applications which had been filed by the Seaboard and upon hearing of said applications on a consolidated record, the Commission refused to allow the introduction of evidence bearing on proof of public convenience and necessity and further refused to receive evidence bearing on monopoly and restraint of competition.

Paragraph XII (R. 20) charges error in that the Commission exempted the motor carrier operations, which the Seaboard was authorized to conduct, from the tariff provisions of Sec. 217.

Paragraph XIII (R. 20) charges error in that the Commission exempted the Seaboard from requirements for the keeping of motor carrier accounts and records in accordance with the provisions of Section 220 and the Commissions rules and regulations thereunder.

Paragraph XIV (R. 21) charges error in that the Commission failed and refused to apply the same regulations in connection with motor carrier operations conducted by railroads, which it requires of independent motor carriers, and particularly appellants here, and thereby failed and refused to administer the act fairly and impartially.

Plaintiffs further charge that by reason of the unreasonable and discriminatory administration of the law that plaintiffs would suffer irreparable injury and damage.

Prayers (R. 22). Plaintiffs requested that the orders of the Commission be set aside and that the matters involved be remanded to the Commission with directions to conduct a fair and reasonable hearing and to receive evidence upon which statutory findings might be made.

RULINGS BELOW

Upon hearing on the issues the majority of the court below, Dobie, Circuit Judge and Barksdale, District Judge, (R. 206 et seq) held:

1. Constitution of Joint Boards - Consolidation of the Individual Applications (R. 207).

The court disposed of this point by finding that the assignment of matters for hearing by Joint Boards and the constitution of the Joint Boards were matters within the discretion of the Commission.

2. Exclusion of Evidence - Fair Hearing (R. 209).

The court found that much of the proffered evidence might have been relevant had the Commission consolidated the applications but concluded that "it is open to very serious question whether this excluded evidence would have, if admitted, influenced the decisions of the Commission".

3. Use of Improper Criteria as to Public Convenience and Necessity (R. 210).

The court concluded that inasmuch as the motor carrier operations which the Seaboard proposed to conduct, were to be coordinated with its railroad operations and were therefore a different type of transportation, the Commission was warranted in departing from the normal criteria of public convenience and necessity.

4. Monopoly (R. 211).

The court adopted the statements of the Commission: "Nor does it appear from the records made in these cases that there will be any great diversion of traffic from independent motor carriers." (17 M.C.C. 432). "Nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor carrier field." (34 M.C.C. 444)

In support of its conclusion the court quoted from another opinion of the Commission: "One competitive carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest". (28 M.C.C. 10).

The only factual matters referred to by the court as being in support of the conclusions stated by the Commission, appear to be the Court's reference to the fact that, during the pendency of this litigation, the Seaboard has refrained from inaugurating all of the operations authorized and has discontinued some of them.

5. Laches (R. 212)

The Seaboard, intervenor below, raised the issue of laches, however the court did not pass on this question.

6. Fraud (R. 213)

Plaintiffs below contended that the filing by the Seaboard of numerous separate applications (many of them filed on the same date) and the holding of separate hearings on each of these separate applications, had the effect of depriving protestants of their opportunity to show the manner in which they would be adversely affected by the combined operations. This, plaintiffs contended, resulted in the perpetuation of a legal fraud on the procedure contemplated by the act. The court below found no substance in plaintiffs' contention.

7. The position of the United States in this Case (R. 213).

The United States intervened in this case when the Commission consolidated these applications for hearing and consideration of the Seaboard's petition for removal

or modification of conditions. When the complaint was filed it named the United States as a necessary statutory defendant. The United States answered and confessed error. The Interstate Commerce Commission defended its orders. With respect to the position taken by the Anti-trust Division, which was in substance, the position taken by the plaintiffs, the court said:

> "The contentions advanced by these counsel we find to be lacking in substantial merit".

8. Separate Tariffs and Accounting for Motor Traffic (R. 214).

Plaintiffs contended that the Commission was without power to exempt the Seaboard from the tariff and accounting provisions of the Motor Carrier Act. The court found that these were matters entrusted to the sound discretion of the Commission.

9. Reflections on the Interstate Commerce Commission (R. 214).

The court (copied from a brief filed by the intervenor, Seaboard) quoted some of the charges which counsel for plaintiffs made through a brief of approximately 200 pages. Being fully aware that, following six years of frustration, the brief would deal boldly with the issues, counsel were careful to preface the brief by what was believed and intended to be a full and adequate disclaimer of any reflections on the integrity of the Commission, but the court overlooked the disclaimer and apparently concluded, most erroneously, that counsel had been critical of the Commission in some manner distinguishable from critical in the legal sense.[1]

10. Presumptive Validity of the Commission's Orders (R. 215).

[1]The facts with respect to this matter are shown at [redacted] page 151 [redacted] hereto.

The court took the position that all of the points raised by plaintiffs were matters within the administrative discretion of the Commission and therefore did not present justiciable issues.

Dissenting Opinion by Paul, District Judge (R. 216)

Judge Paul concluded that plaintiffs had been denied a full and fair hearing and to that extent the action of the Commission was unreasonable and arbitrary. He also concluded that the Commission had failed to apply the proper statutory standards in its determination of "public necessity and convenience".

LEGISLATIVE HISTORY OF STATUTE

The portions of the Interstate Commerce Act upon which the issues in this case turn, were originally enacted as the Motor Carrier Act of 1935. In 1940 the Interstate Commerce Act was amended and the Motor Carrier Act became Part II of the Interstate Commerce Act. The Congressional declaration of "transportation policy" was first enacted as an introductory to the Motor Carrier Act. In 1940 it was re-enacted as a declaration of "transportation policy" with reference to the entire Interstate Commerce Act. The Motor Carrier Act of 1935, contained in Sec. 213, a committee amendment requiring certain findings by the Commission in connection with acquisition of control of motor carriers by railroads, and in 1940, old Sec. 213, was re-enacted as Sec. 5(b) of Part I. The changes above outlined involve transposition of provisions of the Act, rather than changes in substance.

In 1940 Congress substantially re-wrote Sec. 202 of the Motor Carrier Act, and by Sec. 202(a)(1) Congress delimited the motor carrier operations which might be conducted by railroads, water carriers, and freight forwarders, without such operations being subject to the provisions of the Motor Carrier Act. The operations so

exempted, were restricted to collection and delivery service within terminal areas.

The Motor Carrier Act of 1935, came after about 10 years of Congressional consideration of federal regulation of motor carriers. During that period approximately 20 bills were introduced and as to some of them extensive hearings were held.

During the same period the Interstate Commerce Commission conducted two general investigations involving transportation by motor vehicle. Some of the reports of the Commission were printed as Congressional documents and were also printed in the reports of the Interstate Commerce Commission. The most important report issued by the Commission was *Coordination of Motor Transportation*, 182 I.C.C. 263, decided April 6, 1932. The Commission had also issued a prior report titled *Motor Bus and Motor Truck Operation*, 140 I.C.C. 685, decided April 10, 1928. The Commission transmitted to Congress two reports which were printed as Congressional Documents, as follows:

Document 152, Senate, 73rd Congress, Second Session. Document 89, House, 74th Congress, First Session. Senate Bill 1629 became the Motor Carrier Act and hearings on this bill were held February 25 to March 6, and March 15 to 19th, 1935.

JUDICIAL HISTORY OF STATUTE

1. Criteria - Public Convenience and Necessity

With respect to the proper criteria for determining convenience and necessity under Secs. 206 and 207, where railroads are applicants, this case (No. 558) and the case of *United States* v. *Parker* (Nos. 507 and 508) this term, are the only cases directly bearing on the subject. These cases have been assigned for argument on the same date.

In these two cases the courts below reached different conclusions.

Under different facts and circumstances, some elements of the question have been before this Court in the following cases:

Texas and P. R. Co. v. *Gulf and S. F. R. Co.*, 270 U. S. 266, 70 L. ed. 578.

Texas and N. O. R. Co. v. *Belt R. Co.*, 276 U. S. 475, 72 L. ed. 661.

Texas v. *U. S.*, 292 U. S. 522, 78 L. ed. 1402.

C. & O. Ry. Co., v. *U. S.* 283 U. S. 35, 75 L. ed. 824.

2. Policy Of The Commission

Since the enactment of motor carrier legislation, the question of transportation policy as promulgated by the Commission has been before this Court in the following cases:

Eastern Central M. C. Assn. v. *U. S.*, ... U. S. ....., 88 L. ed. 431.

Carolina Frt. Car. Corp. v. *U. S.*, 315 U. S. 475, 86 L. ed. 971.

Pennsylvania R. R. v. *U. S.*, decided January 29, 1945.

3. Fair and Reasonable Hearings

We are not familiar with any cases under the Motor Carrier Act in which this Court has had occassion to consider the question, however, this Act adopts the procedure theretofore applicable to Part I, and this Court has in connection therewith considered the matter in a number of cases.

Interstate Commerce Commission v. *L. & N. R. Co.*, 227 U. S. 88, 57 L. ed. 431.

Baltimore & Ohio R. Co. v. *U. S.*, 264 U. S. 258, 68 L. ed. 667.

4. Discriminations Against Motor Carriers

Here the Commission has employed discriminatory administrative practices which prejudice motor carriers and favor railroads. To the extent that such procedure involves a policy, this Court has considered the Commission's policy in the following case:

Eastern-Central M. C. Assn. v. *U. S.*, ... U. S. ....., 88 L. ed. 431.

5. Findings of Fact

In connection with both Parts I and II of the Interstate Commerce Act, this Court has had occasion to reverse the Commission on its failure to heed the requirements that it make appropriate findings for the purpose of meeting statutory requirements and for the purpose of facilitating judicial review.

Yonkers v. *U. S.*, ... U. S. ....., 88 L. ed. 241.
Florida v. *U. S.*, 282 U. S. 194, 85 L. ed. 291.
U. S. v. *B. & O. R. Co.*, 293 U. S. 454, 79 L. ed. 587.
U. S. v. *Chicago M. St. P. R. Co.*, 294 U. S. 499, 79 L. ed. 1023.
Eastern-Central M.C. Assn. v. *U. S.*, ... U. S. ....., 88 L. ed. 431.

6. Hearings By Joint Boards

The question as to whether an application should be heard by the Commission or by a Joint Board has been before the Federal Courts in the following cases:

North Coast T. R. Co v. *U. S.*, 54 Fed. Supp. 448.
Empire Trails, Inc. v. *U. S.*, 53 Fed. Supp. 373.
Carolina Scenic Coach Co. v. *U. S.*, 56 Fed. Supp. 801, Affirmed No. 637, Oct. Term 1944.

The Commission has, on occasions, taken a view of the matter which differs from the procedure followed here.

Herman Clary C. C. Application, 32 M. C. C. 5.

7. Injunction Proceedings Against Railroads

The Department of Justice upon being advised that the Association of American Railroads (including the Seaboard) had entered into a conspiracy to defeat the coordination of transportation between railroads and independent motor carriers, brought suit under the Anti-trust Laws. The suit was brought in the District of Columbia on October 25, 1939 and was titled *U. S.* v. *Association of American Railroads,* Civil Action No. 4551. On July 18, 1941, a final decree was entered permanently enjoining the railroads.

Further reference to the issues of monopoly and the Anti-trust Laws are found in:

McLean T. Co. v. *U. S.,* 321 U. S. 67, 88 L. ed. 358.

8. Interests of Competing Carriers

In cases challenging the issuance of operating authority this Court has recognized the interests of competing modes of transportation in such matters.

Alton Railroad Co. v. *U. S.,* 315 U. S. 15, 86 L. ed. 586.

SUMMARY OF EVIDENCE

Appellants' Evidence

The gravamen of this action concerns the alleged refusal of the Commission to receive and consider evidence and to otherwise conduct a fair and reasonable hearing. For those reasons the summary of appellants' evidence is necessarily a summary of appellants' efforts to introduce evidence, rather than a summary of their success.

The Court below found:

"Protesting motor carriers next complain of the refusal of the Joint Board to receive and consider certain evidence offered by protestants. As a result, we are told: 'Every effort of plaintiffs to have the proceeding conducted under any semblance of a fair, reasonable and statutory hearing was summarily rejected by the Commission.'

"This complaint of plaintiffs is cognate to the Commission's refusal to consolidate the several applications of Seaboard. This proferred evidence covered a wide field and much of it might have been relevant had the Commission consolidated the applications. This evidence seems to have been excluded by the Joint Boards on the ground that each Joint Board was necessarily limited to deciding upon, and only upon the particular application, or applications, before that Board.

"Some evidence on the points which the protestants sought to develop did filter into the hearings before the Joint Boards. The Commission had before it the reports of all the Joint Boards. When, therefore, the Commission decided against consolidation, against a reopening of the case and against a rehearing of the matters, with the applications considered together as a whole, we think this contention of plaintiffs falls to the ground. Then, too, it is open to very serious question whether this excluded evidence would have, if admitted, influenced the decisions of the Commission." (R. 209, 210)

Typical illustrations of the efforts of the appellants to introduce evidence and to cross-examine witnesses were attached to and made a part of the complaint and were identified as Exhibit B-3 thereof and is set forth in the record (R. 37-44).

The steps taken by the appellants to secure a consolidated hearing on the several applications in order that evidence might be introduced are shown by complaint Exhibits C, D, and E, which are set forth in the record (R. 44-51).

The order of the Commission denying appellants' motions and petitions was attached to the complaint as Exhibit F (R. 52).

Subsequently the Commission reopened and consolidated all of the dockets for the purpose of modifying or removing certain conditions which had been attached to the certificate. The order of the Commission reopening the proceeding was attached to the complaint as Exhibit N (R. 135, 136). It will be observed that said order in and of itself restricted the scope of the proceedings and the evidence which would be received, and pursuant to such restrictions the examiner excluded the evidence which appellants sought to introduce.

Upon the consolidation and reopening of the proceedings the Anti-trust Division of the United States Department of Justice intervened, and upon the refusal of the examiner to admit evidence the said department petitioned the Commission for further hearing and the receipt of essential evidence and said petition was attached to the complaint as Exhibit P (R. 137, 141).

Appellants also petitioned the Commission for reopening, rehearing and the admission and production of evidence and said petition was attached to the complaint as Exhibit Q (R. 142-151).

The Commission denied the motions of the Anti-trust Division and of appellants and the order of denial was attached to the complaint as Exhibit R (R. 151).

Because of the piece-meal hearing by Joint Boards of the several applications in the first place and the refusal of the Commission to receive evidence when the applications were consolidated, appellants were continuously deprived of an opportunity to present any evidence dealing with the overall picture presented by the numerous applications for operating authority. Under such circumstances a summary of appellants' evidence is but a summary of their efforts to introduce evidence and of the denial orders

issued by the Interstate Commerce Commission. This is the picture which was recognized by Judge Paul in his dissent below.

As stated by the majority opinion below, some evidence "did filter into the hearings," but this evidence related solely to the individual segments of the operations which the railroad sought to conduct. The futility of introducing evidence with respect to segments of the operations was so apparent that appellants discontinued those efforts with respect to a number of the applications before Joint Boards, and this was done in contemplation of the Commission consolidating the proceedings and granting a proper hearing.

Witnesses For Appellants

In the course of the separate hearings on the separate segments of the operating rights applied for, 34 witnesses appeared in opposition, of whom 5 were so-called public witnesses and 29 represented motor carriers.

The substance of the testimony given by the public witnesses was that there was no need for more transportation facilities. They also expressed some concern over the possibility that the entrance of the railroad into the motor carrier field might result in eventual abandonment of branch lines operated by the railroad.

Witnesses for the motor carriers testified in general with respect to their routes; the service rendered; the number of competitors operating over the route; their ability and willingness to coordinate their services with those of the railroad; and their surplus transportation capacity.

Appellees' Evidence

Generally appellees' evidence related to various improvements which might be made in the service of the railroad

by the use of line-haul trucks. These contemplated improvements related principally to expedited delivery.

Considerable testimony was introduced bearing on economies which might be effected by eliminating train stops, over-time wages, etc. However, this evidence as a whole, was somewhat contradictory in that it was also repeatedly denied that the discontinuance of any trains or train services, was contemplated.

Witnesses For Appellees

In the course of the separate hearings of the separate segments of the operating rights applied for, 41 witnesses appeared in support of the applications, of whom 22 were so-called public witnesses and 19 were employees of the railroad applicant. The public witnesses testified generally that there was always room for improvement in transportation service and if, as the applicant contended, the proposal would result in better service, then they favored it.

The railroad employees testified generally as to train operations, train schedules, delivery schedules and economies.

The railroad witnesses disclaimed any knowledge of the service being given by independent truck lines and stated that the applicant would not cooperate or coordinate with independent motor carriers under any circumstances.

They testified that rights applied for would be convenient for the railroad.

ASSIGNMENT OF ERRORS
(R. 225)

Come now the American Trucking Associations, Inc., and, in connection with their petition for appeal, submit the following Assignment of Errors committed by the majority of the learned District Court of the United

States for the Eastern District of Virginia, in the course of the proceedings and in and by the decision filed July 17, 1944, and the terms of final decree passed and entered on the 21st day of July, 1944, in the above-entitled cause:

1. The said District Court erred in that it decreed the petition of petitioners, American Trucking Associations, Inc., et al, to be denied and dismissed and that the Interstate Commerce Commission have judgment against the plaintiff, notwithstanding that as specifically averred in said complaint, and firmly established by the proof, the orders of the Interstate Commerce Commission, as set forth in Paragraph 4 of the complaint and the exhibits therein referred to, then and now complained of were and are illegal and should be held to be void, because: The said Commission misconceived its statutory duty in that:

(a) The reports and orders of the Commission conclusively show that contrary to law, the Commission issued motor carrier certificates to the Seaboard Railway on the assumption that it had statutory authority and jurisdiction to recognize and certificate a hybrid type of carrier consisting of a combination of rail and motor service.

(b) The reports and orders of the Commission show that it regarded the applications for certificates of convenience and necessity to conduct hybrid operations (part rail and part motor) as being matters not controlled by the usual legal criteria for public convenience and necessity under Sections 206(b) and 207 of Part II, and the Commission further concluded, contrary to law, that such operations could be exempted from other provisions of Part II, i. e., Section 216, covering tariffs, and Section 220, covering accounting, and accordingly so exempted such operations.

(c) The reports and orders of the Commission show that, contrary to law, the Commission failed and refused to provide nondiscriminatory provisions in certificates (Sec. 208) and to give force and effect to the provisions of the

National Transportation Policy, with particular reference to the requirements for fair and impartial regulation of, and the preservation of the inherent advantages of, each type of transportation committed to its jurisdiction.

2. The said District Court erred in holding that the Commission had received evidence and applied proper legal criteria in determining public convenience and necessity under Section 206(b), in that:

(a) The reports and orders of the Commission conclusively show, and the Commission on brief admitted, that it did not apply in these railroad cases the normal criteria which it had applied in other motor carrier cases where independent motor carriers were applicants, but applied a different "policy" of its own determination where railroads and railroad owned motor carriers are applicants for motor carrier rights.

(b) The reports and orders of the Commission show that normal criteria for the determination of public convenience and necessity was either disregarded, or subordinated to the point of exclusion, and that the Commission substituted in lieu thereof, a policy based on determination of railroad convenience.

(c) The reports and orders of the Commission show that the Commission deemed it immaterial and therefore disregarded the willingness and ability of the independent motor carriers to furnish adequate service in the territories covered by railroad applications and to coordinate their services with those of railroads, whereas, the Court found that the Commission did consider the service rendered by independent motor carriers in connection with its determination of public convenience and necessity.

(d) The Commission denied appellants a fair and reasonable hearing in that it failed and refused to receive and consider evidence pertinent to the issue of public con-

venience and necessity and denied itself a record from which the required statutory findings might be made.

(e) The said District Court misconceived the distinction between railroad applications under the "grandfather" clause of Sections 206(a) and the proof there required, being proof of past services only, as opposed to applications under Sections 206(b) and 207 of Part II, requiring proof of present and future public convenience and necessity.

3. The said District Court erred in concluding that the Commission had given proper consideration to and made the requisite statutory findings in connection with restraint of competition under Section 5 of Part I, in that:

(a) The Court misconceived the issue presented and assumed that plaintiffs were directly seeking to have the Commission administer the Anti-Trust Laws, whereas, the complaint (Paragraph 5(b)) specifically put in issue the statutory findings required by old Section 213(a)(1) of the Motor Carrier Act (Part II of the Interstate Commerce Act) and New Section 5(a)(b) of Part I of the Interstate Commerce Act, and in connection therewith:—

(b) In denying plaintiffs' contentions that the Commission had refused to receive evidence and failed to make the required statutory findings, the Court quoted several conclusions, from the reports of the Commission, in support of the view taken by the Court, and seemingly overlooked the fact that the cited conclusions of the Commission are among the conclusions which plaintiffs charged were unsupported by the evidence.

(c) The Court found, "there is ample evidence to support these findings," however, plaintiffs contended that there was no evidence to support the conclusions of the Commission and the Court did not refer to any evidence in support of the conclusions of either the Commission or the Court, nor was there any evidence from which the

Court or the Commission might have reached their respective conclusions.

4. The said District Court erred with respect to the provisions of Section 205(a) of Part II, as follows:

(a) In holding that the Commission had power and jurisdiction to assign the several applications, filed by the receivers of the Seaboard Air Line Railway Company, for separate hearings before several separate Joint Boards.

(b) In holding that the assignment of such separate applications for separate hearing before separate Joint Boards was a well established administrative practice.

(c) In holding that plaintiffs' timely and repeated objections and exceptions to the separate Joint Board proceedings were addressed to the sound discretion of the Commission as opposed to plaintiffs' contentions that said exceptions were grounded on mandatory statutory requirements.

5. The said District Court erred in holding that the Commission had accorded plaintiffs full, fair and reasonable hearings under Secs. 205(a)(e), 206, and 207 of Part II and Sec. 217 of Part I, and that plaintiffs were not injured by the exclusion of evidence, in that:

(a) The said District Court was inconsistent and in error in finding that "much of it (excluded evidence) might have been relevant had the Commission consolidated the applications," and then concluding that plaintiffs had been accorded full, fair and reasonable hearings, despite the fact that the Court also found that the Commission failed and refused to either consolidate the hearings or receive the evidence.

(b) The said District Court was inconsistent and in error in finding, on the one hand, that "each Joint Board was necessarily limited to deciding upon, and only upon, the particular application, or applications, before that Board,"

and then, on the other hand, concluding that the Commission, by giving consideration to an aggregate of records of hearings, which were individually deficient, thereby cured the errors which were inherent in the individual records.

(c) The said District Court was inconsistent and in error in finding, "Then, too, it is open to very serious question whether this excluded evidence would have, if admitted, influenced the decisions of the Commission," and then proceeding, as the Court did, to resolve this "serious question" in favor of the Commission and against these plaintiffs.

6. The said District Court erred in assuming that the doctrine with respect to the "presumptive validity which attaches to the determination of an administrative tribunal," is applicable in this case, in that:

(a) The decisions dealing with the issue are not dogmatic in the sense that they may be lifted from their factual setting and transplanted.

(b) The issues involving error on the part of the Commission which were presented to the Court, involved errors of law, in connection with statutory construction, as distinguished from matters of discretion which are committed to administrative determination or expert judgment.

(c) The challenged course of procedure and policy, as now applied by the Commission was placed in issue before the Court, promptly upon the conclusion and exhaustion of administrative remedies.

(d) The Court found, with respect to the Commission's policy in connection with railroad applicants, "this appears to have been a well settled policy of the Commission," whereas the "policy" was one of the precise issues presented to the Court for review and therefore may not be, in and of itself, cited as justification or authority.

7. The said District Court erred in suggesting that plaintiffs questioned the administrative integrity of the Commission, in that:

(a) The abbreviated quotations cited in the opinion of the Court were lifted from their context in the brief and in the form presented, and in a setting of omissions, are misleading.

(b) The brief referred to contained and prominently presented clear and unequivocal expressions of plaintiffs "*respect,*" and "*esteem*" for the Commission and that any terms used in the brief, were "*confined to their legal concept.*" (See appendix)

(c) Those assurances were, in substance, repeated on oral argument and laid a premise widely at variance from inferences which might be drawn from the quotations contained in the opinion.

(d) The conclusions were based on substantial matters of record and were therefore fair legal comment.

SUMMARY OF ARGUMENT

Point 1—Policy of the Commission.

The Commission is in error in conceiving that it has jurisdiction to adopt the *policy* of encouraging and authorizing railroads to engage in the motor carrier business irrespective of the adequacy of existing motor carrier transportation and thereby promote a regulated transportation monoply.

Point 2—Waiver of Proof of Public Convenience and Necessity.

The Commission is without jurisdiction and power to adopt a *policy* which involves waiving the normal criteria of proof of public convenience and necessity, in connection

with issuance of motor carrier certificates to railroads, and the substitution therefor of a mere showing of railroad convenience.

Point 3—Hybrid Operations.

The Commission is without jurisdiction and power to certificate hybrid operations, part railroad and part motor carrier and to exempt such operations from the tariff and accounting provisions of the Motor Carrier Act.

Point 4—Exclusion of Evidence.

By the exclusion of evidence the Commission failed to conduct a fair and reasonable hearing.

Point 5—Failure to Make Findings.

The Commission failed to make the findings required by statute and substituted conclusions for findings.

Point 6—Hearings - Forum.

The Commission failed and refused to either hear the applications itself or to refer them for hearing to a properly constituted Joint Board.

A more complete summary of the argument is set forth under the "conclusion" of this brief.

ARGUMENT

Introductory

This is a test case for the purpose of determining the jurisdiction and powers of the Commission in establishing and carrying out a policy which appellants contend is without statutory basis and is contrary to the intent of Congress.

The importance of the case in its broad aspects concerns the economic future of the entire motor carrier industry

and the entire transportation policy which Congress has laid down.

The breadth and depth of the issues involved may be illustrated by a few mathematical references. There are approximately 250,000 miles of first main line railroads in the United States. Pursuant to the policy adopted by the Commission it has or is about to authorize railroads to own and conduct motor carrier operations paralleling approximately 100,000 miles of railroad; and in addition, it has or is about to authorize the Railway Express Agency, which is a wholly owned railroad subsidiary, to own and conduct motor carrier operations paralleling approximately 100,000 miles of railroad. There is every indication that it is the plan of the Commission to encourage railroads to parallel substantially every mile of railroad in the United States, with two railroad owned or controlled motor carrier operations.

That is the picture which confronts the independent motor carrier industry and which calls for an examination of the *policy* under which the Commission operates.

Point 1—Policy Of The Commission. The Commission Is In Error In Conceiving That It Has Jurisdiction To Adopt The Policy Of Encouraging And Authorizing Railroads To Engage In The Motor Carrier Business Irrespective Of The Adequacy Of Existing Motor Carrier Transportation.

We take the position that "policy" is a legislative function as distinguished from administrative. The Commission would be without jurisdiction to adopt and administer a national transportation policy even if Congress had not acted. If, as we contend, Congress has unmistakably adopted a transportation policy, then it is certain that the Commission may neither adopt a different policy nor circumvent the Congressional policy.

There is involved here, an issue which has been debated by able students of transportation matters for some decades, namely, competition versus regulated monopoly. We contend that the Commission has adopted the "policy" of promoting a regulated transportation monopoly under the auspices of railroads. Appellants well know that this is not the forum to debate the merits of such an issue. But they are also confident that the Commission has not been clothed with jurisdiction to adopt and implement such a policy. Congress has directed the Commission to report its views to it, and Congress has not been content to be advised by the Commission alone, but set up in 1940, an independent agency, the Board of Investigation and Research, to report on the subject.

History of Commission's Policy

The policy which is favored by the Commission, and which we contend the Commission has undertaken to put into effect without Congressional approval, is not new with the Commission. Before the Motor Carrier Act, 1935 was passed, the Commission made its views known on more than one occasion. Its first comprehensive report on the subject was entitled Motor Bus and Motor Truck Operation, published April 10, 1928, and reported in 140 I.C.C. 685. There the Commission said:

> "Steam railroads are, and so far as now can be discerned will remain, the backbone of the national transportation system. They alone can be relied upon for mass transportation and long-distance hauls of passengers and goods." 140 I.C.C. 719.
>
> "Efficient and economical management of railroads will to a constantly increasing extent call for the utilization of motor vehicles for short hauls or as feeder or distributing agencies." 140 I.C.C. 721.
>
> "An official of the railroad expressed the opinion that both forms of transportation could not operate successfully and that one or the other must give way.

He was also of the opinion that there was no possibility of eliminating motor-truck or motor-bus transportation for short hauls, as he felt the public demanded the service." 140 I.C.C. 725.

Then under conclusions, the Commission said:

"3. Railroads, whether steam or electric, and water carriers, subject to the interstate commerce act, should be authorized to engage in interstate commerce by motor vehicles on the public highways, and thereafter such service should be subject to the provisions of the interstate commerce act, * * *." 140 I.C.C. 745.

The Commission issued a second report entitled Coordination of Motor Transportation, published April 6, 1932 and reported in 182 I.C.C. 263. There the Commission said:

"Upon consideration we conclude:

"1. That transportation by motor vehicles, busses, and trucks, over the public highways is, within certain distances, and in certain respects a superior service, and that the rail and water lines should be encouraged in the use of this instrumentality of commerce whereever such use will promote more efficient operation or improve the public service;

"2. That there is substantial competition between rail and water carriers on the one hand and motor carriers on the other for the transportation of both passengers and freight and that this competition is increasing;

"3. That such competition is conducted under conditions of inequality, particularly in regard to regulation;

"4. That a contributing cause, aside from the general business conditions, of the present unsatisfactory financial condition of the railroads is the existence of unrestrained competition by rival transportation agencies;

"5. That there is today, and probably would be under normal conditions, an excess of carrying capacity of existing transportation facilities;

"6. That unrestrained competition is an impossible solution of the present transportation problem and is incompatible with the aim of coordination under regulation;

"7. That Federal legislation relating to the regulation of motor vehicles operating upon the public highways and engaged in interstate commerce is desirable in the public interest." 182 I.C.C. 379-380.

Following these investigations and reports, the Commission transmitted to Congress certain reports by the Coordinator, which were printed as Congressional documents, and which included drafts of proposed legislation.

Senate Document 152, 73d Congress, 2d Session:

"Coordination, as defined in the *Coordination Case* (p. 328), is the 'combining (of) two or more forms of transportation in the interest of better service or economy.' Such combination, it was noted, 'may be effected by a single transportation agency or by the cooperative efforts of different agencies.'" (page 18).

"More formal arrangements for coordination are illustrated by the use which many railroads make of trucks, mainly through subsidiary companies or contractors, in substitution for local, way-freight service or to provide service to points previously served by branch lines, now abandoned. Trucks are also used to supplement train service, giving the shipper more expeditious or better-timed service. They are further employed by railroads in operations which are essentially independent of rail service, although through the use of common officers and facilities a certain degree of coordination is achieved.

"The several uses of trucks in coordination with the railroads, outlined above, *are of clear public advantage.* They suggest possibilities of much greater development in this direction, and these possibilities undoubtedly exist." (page 19.)

"Beyond question they can use trucks and busses to great advantage to supplement or substitute for their rail service, both at terminals and on the line. Already they are doing this to a very considerable extent, as is shown in appendix E, and *the movement is plainly one which should be encouraged,* for it means both greater efficiency and greater economy in service. Some believe that they should definitely become transportation systems, rather than railroad systems, and assume control over all means of transportation. * * *

"While railroads should be permitted to use trucks freely in connection with their rail service, there appears to be no present need for encouraging a movement toward the absorption by them of truck, bus, and water operations. * * *

"Included in railroad self-help is, of course, the proper utilization as an adjunct of rail service of all other means of transportation." (page 34, 35.)

"**Railroad reasons for repeal.**—The reasons offered by the railroads for repeal of the statutory provisions in question are stated in very general terms. They are summed up in the following quotation from the brief filed in support of their proposals:

* * * if there is to be any real coordination of transportation as between rail and water carriers, the rail carriers must be permitted to own, operate, and have an interest in water lines, all the operations of these lines, however, being subject to the jurisdiction of the Interstate Commerce Commission. * * * If there is to be real coordination of a character which will be most helpful to the commerce of the country, we must no longer think of rail transportation, water transportation, and motor transportation as separate and distinct agencies." (page 74.)

"The railroads recommend repeal of the Denison Act,* * *.

"The Denison Act has to do with the establishment of through routes and joint rates between water carriers operating on certain of the inland waterways and connecting rail carriers, and the division of such

joint rates. It was intended to provide a more expeditious handling of such matters than under the Interstate Commerce Act. However, the interpretation placed upon the Denison Act by the Supreme Court in a decision handed down on March 5, 1934, apparently largely nullifies this intent. Careful study of this decision, when published, is desirable, but it seems probable that the act, as thus interpreted, serves no useful purpose." (page 91.)

"It is too much to expect that all of the present facilities of transportation in each group can survive, for there are many which are now without economic justification, but out of the present confusion and waste a sound and well coordinated national system of transportation can be built.

"The agency to achieve this result is believed to be the Interstate Commerce Commission. If transportation is to be coordinated, regulation must be coordinated, and the Commission is the natural and appropriate agency for that purpose. It has been in existence for nearly half a century, and few governmental bodies have stood the test of time as well. No other agency has the organization or the necessary experience. The regulation proposed will have the best chance for success in its hands." (pages 96, 97.)

House Document 89, 74th Congress, 1st Session, page 55.

"The British Royal Commission of 1930, which reported on the transportation situation in that country, came unanimously to the conclusion that the railroads could not alone be nationalized to advantage and that it would be necessary to include other forms of transport as well. Members who favored the principle of nationalization joined in this conclusion. It has also been the tendency in countries where the railroads are nationalized to give them at least a favored opportunity to engage in other forms of transportation." Beginning on page 201 of the same document, is a proposed motor carrier act.

None of the reports or recommendations of the Commission ever contained any suggestion of legislative re-

strictions against the development of a transportation monopoly under railroad control.

Policy of Congress

Congress had already restricted railroads with respect to control of competing water carriers, in the Panama Canal Act,[3] and had further restricted railroad control of water carriers in the Inland Waterways Corporation Act.[4]

When the Motor Carrier Act was under consideration the purpose of Congress to recognize and protect that type of transportation was made clear by the Transportation Policy which was then adopted, and further provisions were made against restraint of competition.[5] That Congress has no sympathy with the policy of regulated transportation monopoly was shown by placing both air carriers and certain water carriers under separate agencies, which are not related to the Interstate Commerce Commission.

The important question here is not whether the Commission is correct in its views respecting a regulated transportation monopoly or that Congress was wrong, but that the Commission has failed to comprehend that *Congress has neither adopted the views of the Commission nor authorized the Commission to experiment with them.*

Policy—Public Interest

The Commission in its reports, granting motor carrier rights to railroads, finds it to be in the public interest; that railroads be permitted to institute, own and conduct motor carrier operations; even though there is an abundance of independent motor transportation available; and refuse to cooperate with independent motor carriers. Then the Commission says, that it cannot believe that Congress intended to the contrary. That is the gist of this case, and undoubt-

[3] Interstate Commerce Act, Sec. 5(14), 54 Stat. 909.

[4] Inland Waterways Corporation Act, Sec. 3(d)(1), 49 U. S. C. A. 153.

[5] Interstate Commerce Act, Sec. 213, which was repeated in 1940 and re-enacted as Sec. 5(b).

edly explains the presence of collateral issues involving reasonable hearings for protestants, enforcement of provisions of the Motor Carrier Act, etc.

Apart from the academic merits of regulated transportation monopoly, and failure of the Commission to comply with several specific provisions of the Act, there is presented a question of policy making and administration, the pragmatic import of which can be illustrated and emphasized by a few suggested questions.

Can the inherent advantages of independent motor carriers be preserved, under a motor carrier schedule of rates, based as the Commission insists, on truck load quantities, in the face of competition from a railroad operated motor carrier operating under railroad rates, based on train load quantities which the Commission permits?

Can an independent motor carrier industry survive in the face of competition from a railroad operated motor carrier, which has a backlog of non-competitive traffic through which losses can be absorbed?

Can it possibly be consistent with the public interest that the existing normal oversupply of transportation facilities be augmented by the addition of 500,000 miles of railroad owned or controlled truck lines, without the usual criteria of public convenience and necessity?

Can the Commission possibly carry out the National Transportation Policy and regulate railroad motor transportation so as to prevent destructive competition, in the face of an exemption for the railroads from accounting requirements showing profits and losses while at the same time independent motor carriers are compelled to abide by rigid accounting requirements?

Can it be in the public interest, as a matter of policy, that each mode of transportation be authorized to supplement its service, particularly its deficiencies, by engag-

ing in every other mode of transportation, which may have some particular inherent advantages, and thereby augment the admitted oversupply of transportation facilities?

Many more equally important questions could be suggested, the answers to which would be equally apparent and subject to judicial notice, but these will suffice to bring to the Court's attention, the issues which are presented under the matter of jurisdiction to establish "policy". They are sufficient to illustrate to this Court that the Court below failed to comprehend the issues and was swept away in the miasma of "administrative discretion".

The fears which were expressed in Congress with respect to the "policy" of the Commission, when the Motor Carrier Act was being debated[6] have been the subject of Congressional observation since then.[7]

Development of the Policy

In this case the Commission has applied, with full force and effect, the policy which it has developed piece-meal, by a series of related proceedings involving the same subject matter. The Commission now proceeds on the theory that when a railroad desires to improve its railroad service by operating as both a railroad and a motor carrier, it is entitled to a motor carrier certificate as a matter of right.

This policy disregards the adequacy of existing motor carrier service; disregards the willingness and ability of existing motor carriers to coordinate their motor carrier operations and services with the railroad; disregards the effect of new and additional competition on the economic stability of existing independent carriers by motor vehicle; and disregards the statutory requirements for a fair and

[6]See appendix for legislative history.
[7]See appendix for Congressional criticism.

reasonable hearing and the statutory requirements for findings of facts.

When an independent motor carrier wishes to extend its line, to improve its service, it must prove public convenience and necessity by the normal criteria. A motor carrier must prove that existing service is inadequate and incapable of meeting the public need. When railroads apply for motor carrier rights the Commission has applied the criteria of railroad convenience.

The Commission has failed to recognize motor carriers as a completely distinct form of transportation and has regarded motor carrier service as merely a desirable adjunct to rail service.

Congress has recognized railroads, motor carriers and water carriers as distinct types of transportation agencies and has directed the Commission to preserve the inherent advantages of each. Congress has made it clear that the economic independence of each type of transportation must be preserved and has established a clear policy that there should be no monopoly of the various types of transportation by any transportation agency.

If a motor carrier, water carrier, or air carrier, determined that the construction and operation of a railroad would improve their service and result in some economies in connection with their respective operations, these carriers would certainly have to meet the normal tests of public convenience and necessity.

They would have to show that existing railroad service was inadequate to meet the public needs. They could not successfully contend that the railroad which they proposed to construct and operate would be some new or different kind of transportation or service, simply because it was owned by, and operated in connection with, water, motor or air carriers. But when the railroads apply for motor

carrier rights, the Commission has concluded that motor carrier operations conducted by and in conjunction with a railroad is something different from motor carrier operations conducted by independent motor carriers.

If, as the Commission assumes, it would be in the public interest to permit railroads to engage in a hybrid railroad—trucking business without proof of public convenience and necessity, then that is a matter which should be addressed to Congress for appropriate legislation.

Congress made no distinction as between applicants for certificates under the Motor Carrier Act, and the Commission is without legal authority to do so.

By way of explanation of the waiver of normal criteria for proof of public convenience and necessity, the Commission says that the service authorized is "something new"—"something different"—"a service different from either rail or motor carrier." The Commission knows that there already exists an abundance of motor, rail, express and forwarder service, and by no stretch of the imagination could public convenience and necessity be established for the duplication of those services. But the duplication is no less simply because it is done by the creation of hybrid operations.

This new service involves the use of more motor vehicles and more motor carrier certificates of convenience and necessity. Certificates for this new service are not issued on a showing of public need for more motor service, but are issued on a showing of railroad convenience and alleged improvement to railroad service. The operations are to be conducted by motor vehicles operated under railroad tariffs. No separate accounting for either expenses or revenue in connection with the motor operations are required. That is all to be scrambled with the railroad operating revenues and expenses. The service is not to be based on cost of rendering motor carrier service, but

is to be based on alleged savings in railroad operations. There is to be no means of testing the reasonableness of the rates or the reasonableness of the competitive practices.

It is new and different beyond a doubt and it is exclusively the policy of the Interstate Commerce Commission.

It is said that this new hybrid operation will not represent new competition, because it will only serve points already served by the railroads. About ninety-five percent of the population of the United States has some kind of railroad service. Can that much of the business in the United States be set aside by the Commission as "belonging" to the railroads, as a matter of policy? The Commission reasons that these points served by the railroads, have always been served by the railroads, therefore, all of that traffic is railroad traffic, and, if the railroads keep it, get it, or recapture it, that is not competition, because it was already railroad traffic.

The Commission appears to proceed on the theory that the ten to twenty percent of the total ton miles of national traffc, which the trucks are handling, belongs to the railroads, because it originates at points served by the railroads. Therefore, it is proper for the Commission to issue the railroads a certificate, by way of policy to get all of the traffic at all of the points served by all railroads. That may represent the kind of law which the Commission believes Congress should have enacted; but Congress rejected that theory, and directed the Commission to regulate the motor carrier industry as a separate and distinct transportation agency.

This is the setting in which the Commission regulates the motor carrier industry and grants certificates of convenience and necessity for motor carrier rights to railroads. The Commission has not exercised its administra-

tive discretion within the frame of the law which it administers.

Courts Will Insist Upon the Observance of Statutory Standards

This Court has reversed the Commission because, in the disposition of matters which normally involve only the exercise of administrative discretion, the Commission had proceeded under a misconception of its statutory duties and powers and disregarded proper legal criteria. That being the issue in this case, it is appropriate to point out wherein the Court has insisted that the Commission act with a proper appreciation of applicable legal criteria and its statutory duties and obligations.

In the Carolina Freight Carriers[9] case this Court reversed the Commission because it appeared that the Commission may not have acted with proper understanding and appreciation of controlling legal principles and statutory requirements. The Commission imposed restrictions on irregular route common carriers which it had not imposed on regular route common carriers. The Commission acted within what it deemed to be its administrative discretion. In setting the order aside, this Court said:

> "Congress has made no such distinction between them and irregular route carriers like appellee."

In the case at bar, the Commission has assumed that there is some fundamental difference between motor carrier operations conducted by a railroad and motor carrier operations conducted by independent motor carriers and the Commission proceeded to apply different criteria for public convenience and necessity. Congress has made

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[9] *Carolina Freight Carriers Corp.* v. *United States*, 315 U. S. 475, 86 L. ed. 971. Decided March 2, 1942.

no such distinction and the Commission may not lawfully do so.

We contend that the Commission was in error in assuming that it had jurisdiction to legislate a distinction between rail and motor applicants and apply different criteria for the proof of public convenience and necessity. That issue does not involve any matters committed to the discretion of the Commission.

This Court said;

> "We would not disturb those conclusions if only a question as to the weight of evidence was involved. But we are not satisfied that the Commission applied the proper criterion in reaching its conclusion • • •."
> "But we conclude that there is no statutory warrant for applying to irregular route carriers a different or stricter test as to commodities which may be carried than is applied to regular route carriers."

Here, appellants contend that there is no statutory warrant for a different or more liberal treatment of a railroad owned motor operation than that applied to independently owned motor carrier operations with respect to the required proof of public convenience and necessity.

In further analyzing the reasoning of the Commission, and in safeguarding private rights, this Court said:

• • •

> "To appellee such matters involve life or death."

Appellants here contend that the issues here are matters involving life or death to independent motor carriers.

In further criticism of the Commission's substitution of conclusions for findings, the Court said:

> "It is impossible to say that the standards which we have set forth were applied to the facts in this record. Hence, as in *Florida* v. *United States*, 282 U. S. 194, 215, 85 L. ed. 291, 304, 51 S. Ct. 110, the defect is not

> merely one of the absence of a 'suitably complete statement' of the reasons for the decision; it is the 'lack of the basic or essential findings required to support the Commission's order.' And see *United States* v. *Baltimore & O. R. Co.* 293 U. S. 454, 464, 79 L. ed. 587, 594, 55 S. Ct. 268; *United States* v. *Chicago, M. St. P. & P. R. Co.* 294 U. S. 499, 510, 511, 79 L. ed. 1023, 1031, 1032, 55 S. Ct. 462."

Here, appellants contend that the Commission failed to make the basic or essential findings required to support its order, but also failed to conduct a proper hearing and failed to hear and receive evidence essential to the making of proper findings.

This Court further said:

> "Congress has prescribed statutory standards pursuant to which those rights are to be determined. Neither the Court nor the Commission is warranted in departing from doubts which may exist as to the wisdom of following the course which Congress has chosen."

Here, appellants contend that the Commission has departed from the standards prescribed by Congress and has undertaken to prescribe its own policy, and has concluded that it was not wise for Congress to subject railroads to the same standards of proof of public convenience and necessity, which the Commission has insisted upon in the case of independent motor carriers.

Appellants are reluctantly forced to conclude that the hearings which the Commission now holds on any railroad application for motor carrier rights are a farce. The matter has reached the point where no possible evidence could serve to show adequate existing services. No possible evidence could serve to overcome railroad desire and railroad convenience. The "hearings" are in effect, ex parte.

This Court further said:

> "Congress has also provided for judicial review as an additional assurance that its policies be executed. *That review certainly entails an inquiry as to whether the Commission has employed those statutory standards.* If that inquiry is halted at the threshold by reason of the fact that it is impossible to say whether or not those standards have been applied, then that review has indeed become a perfunctory process." (Italics ours)

Again addressing itself to the matter of vague and indefinite findings and theories, this Court said:

> "If, as seems likely here, an erroneous statutory construction lies hidden in vague findings, then statutory rights will be whittled away. An insistence upon the findings which Congress has made basic and essential to the Commission's action is no intrusion into the administrative domain. It is no more and no less than an insistence upon the observance of those standards which Congress has made prerequisite to the operation of its statutory command." "

Appellants contend that the Commission has disregarded and obscured compliance with the statutory commands and that erroneous statutory construction lies hidden in vague conclusions pursuant to a policy which the Commission has substituted for essential and basic findings.

This Court made clear the distinction between the observance of statutory standards and the question as to whether the findings are supported by the evidence, and said:

> "Hence that requirement is not a mere formal one. Only when the statutory standards have been applied can the question be reached as to whether the findings are supported by evidence. That is why we cannot say that the Commission would be justified in placing the same restrictions on the certificate in this case had a correct construction of the Act been taken.
> "We express no opinion on the scope of the certificate

which should be granted in this case. That entails not only a weighing of evidence but the exercise of an expert judgment on the intricacies of the transportation problems which are involved. That function is reserved exclusively for the Commission. *United States* v. *Maher*, 307 U. S. 148, 83 L. ed. 1162, 59 S. Ct. 768, supra; *Alton R. Co.* v. *United States*, 315 U. S. 15, ante, 378, 62 S. Ct. 432, supra. Our task ends if the statutory standards have been properly applied."

Here, plaintiff contends, that the Commission has not applied the statutory standards and that it has substituted a policy unknown to the law by which it grants certificates of convenience and necessity to railroads to conduct motor carrier operations.

Plaintiffs do not request the Court to substitute its judgment for that of the Commission on the weight to be given evidence. But plaintiffs do request the Court to find that the Commission failed and refused to conduct a proper hearing and to receive evidence which was essential to meet the requirements of statutory findings. Plaintiff further asks the Court to find that the Commission substituted conclusions, without evidence, in lieu of the findings required by law.

Substitution of Conclusions for Findings

In the *Yonkers* case[10] this Court reversed the Commission because the Commission substituted its conclusions for the jurisdictional findings required by statute.

In dealing with mixed question of law and fact the Courts and not the Commission have the final say.

"As stated by Mr. Justice Brandeis in *United States* v. *Idaho*, 298 U. S. 105, 109, 80 L. ed. 1070, 1074, 56 S. Ct. 690, the determination of what is included within the exemption of § 1 (22) involves a 'mixed question

[10] *Yonkers* v. *United States*, — U. S. —, 88 L. ed. 241. Decided Jan. 3, 1944.

> of fact and law.' Congress has not left that question exclusively to administrative determination; it has given the courts the final say. • • • And the fact that the Commission fails to make a finding on this jurisdictional question obviously does not preclude the reviewing court from making that determination initially. But we deem it essential in cases involving a review of orders of the Commission for the courts to decline to make that determination without the basic jurisdictional findings first having been made by the Commission."

Here, appellants contend that the standards to be applied by the Commission in determining convenience and necessity, and the power of the Commission to treat railroads differently from the standards applied to independent carriers is a mixed question of law and fact subject to judicial determination.

In the *Yonkers* case the Court was dealing with matters involving a conflict between national and local interests, and said:

> • • •
>
> "We are asked to presume that the Commission, knowing the limit of its authority, considered this jurisdictional question and decided to act because of its conviction that this branch line was not exempt by reason of § 1(22). But that is to deal too cavalierly with the Congressional mandate and the local interests which are pressing for recognition."
>
> • • •
>
> "This is not to insist on formalities and to burden the administrative process with ritualistic requirements. It entails a matter of great substance. It requires the Commission to heed the mandates of the Act and to make the expert determinations which are conditions precedent to its authority to act."

Insofar as the duties and powers of the Commission are concerned there is little, if any, difference between its

observance of statutory mandates in cases involving national and local interests, on the one hand, and cases involving the interests of competing transportation agencies, such as railroads and motor carriers.

In a recent case *Eastern-Central Motor Carriers,*[11] this Court reversed the Commission for failure to appreciate its obligations in matters affecting competing transportation agencies and in substituting conclusions for findings.

That case involved an order of the Commission denying to independent motor carriers the right to publish rates based on quantities similar to quantities upon which railroad rates were based.

Acting within what it conceived to be its administrative discretion, the Commission sought to limit motor carriers to quantity weights which could be transported on a single truck. In so doing the Commission disregarded the competitive disadvantage which such an order would place the independent truck lines in competition with the railroads. When the Commission considered the matter it made frequent reference to a "policy" which it had adopted or proposed to adopt. This Court observed:

> "Whether this policy is now intended to apply to all forms of transportation, rail, motor and water, without regard to competitive conditions affecting two or more of them, is not clear from the abbreviated reports made in this case. But their casting of the matter in terms of unqualified policy, dependent only upon proof of the required reduction in operating costs, gives both appearance and substance to the view this may be true, if not with respect to all carriers, then certainly with reference to motor carriers."
>
> * * *
>
> "In returning the case we emphasize that we do not question the Commission's authority to adopt

[11] *Eastern-Central Motor Carriers Association* v. *United States,* —U. S. —, 88 L. ed. 431. Decided February 7, 1944.

and apply general policies appropriate to particular classes of cases, so long as they are consistent with the statutory standards which govern its action and are formulated not only after due consideration of the factors involved but with sufficient explication to enable the parties and ourselves to understand, with a fair degree of assurance, why the Commission acts as it does. Cf. United States v. Carolina Freight Carriers Corp. 315 U. S. 475, 488, 489, 86 L. ed. 971, 982, 983, 62 S. Ct. 722. Observance of this requirement is as necessary when an established policy is being extended to new and significant situations as when a new policy is being formulated and applied in the first instance. We do not undertake to tell the Commission what it should do in this case. That is not our function. We only require that, whatever result be reached, enough be put of record to enable us to perform the limited task which is ours."

In that case the Commission sought to substitute a policy or a conclusion for observance of statutory standards and basic findings and was reversed by this Court, as it had on other occasions.[12] In the case now at bar, the Commission would accomplish the same preferential treatment of railroads by authorizing them to conduct motor carrier operations under railroad tariffs, while compelling independent motor carriers to operate under restricted motor carrier tariffs.

As a result of its misconception of its duties and powers, the Commission has failed to administer the Act in accordance with the intent of Congress and has substituted its policy for the findings required by the Act. That was the reason for the United States confessing error and asking that judgment be entered for the plaintiffs.[12a]

It may be that inquiry with respect to policy involves some of the difficulties which beset the searching of con-

[12] *U. S. v. Chicago M. St. P. and P. R. Co.*, 294 U. S. 499, 79 L. ed. 1023.
Florida v. *U. S.*, 282 U. S. 194, 85 L. ed. 291.
U. S. v. *Baltimore and Ohio R. Co.*, 293 U. S. 454, 79 L. ed. 587.

[12a] R. 172.

science, however both leave tell-tale tracks. Those tracks may here be found in the admissions contained in the reports, in failure to conduct fair and reasonable hearings, in failure to make the requisite statutory findings, and in failure to apply fair and impartial regulations.

Point 2—Waiver of Proof of Public Convenience and Necessity. The Commission is Without Jurisdiction and Power to Adopt a "Policy" of Waiving the Normal Criteria of Proof of Public Convenience and Necessity in Connection with Issuance of Motor Carrier Certificates to Railroads and the Substitution Therefor of a Test of Railroad Convenience.

To illustrate this point, we first trace the policy applied by the Commission in cases involving construction of railroads; then we trace the policy where independent motor carriers apply for certificates, and then we trace the policy which the Commission has pursued in granting certificates to motor carriers controlled by railroads.

A comparison of these parallel cases discloses that in the case of railroad applications for motor carrier rights, the Commission has departed from the statutory standards prescribed by Congress and has failed to apply the normal criteria and in effect has legislated into the Act distinctions which Congress did not make.

The pertinent provisions of the Transportation Policy, certificate provisions Sec. 206a, 207(a) and 208(a); and the provisions covering unification and mergers, Sec. (Old) 213, Sec. 5(b), are set forth in the appendix hereto.

Proof Required of Railroads To Construct Railroads

In a number of railroad cases, the Commission has shown full appreciation of the criteria to be applied in determining public convenience and necessity.

The position of the defendants is so much at variance with Commission decisions in railroad cases, we think it worthwhile to set forth a few citations on this subject.

> "The intervening railroad companies point out that their lines or portions of them parallel to some extent the proposed line of railroad or serve a part of the same territory, providing almost an overabundance of railroad transportation, and that the territory involved is completely and adequately served by them.
>
> • • • •
>
> "Upon the record the applicant has failed to show that the territory is now deprived of adequate railroad transportation or that there is a public need for the line proposed."
>
> *Ray Greenes Proposed Construction,* 228 I.C.C. 792-3, 794.
>
> "As hereinbefore noted the territory appears well provided with sufficient and adequate service by existing railroads."
>
> *Elizabeth Southern Ry. Proposed Construction,* 166 I.C.C. 114.
>
> "'The new road would doubtless be of service to stock raisers and dealers in furnishing quicker transportation to and from ranges. • • • As compared with present service via the Southern Pacific it would furnish quicker passenger service and save time on express, perishables and other freight inbound and outbound between Westwood and California points.
> "No new territory would be opened that could not
>
> • • •
>
> be served by existing carriers."
>
> *Proposed Construction by Northern California R. Co.,* 154 I.C.C. 410.
>
> "Another feature of this case in itself sufficient to condemn the proposal is the relationship between the applicant and the cement company. Most of the ap-

plicant's traffic would be furnished by the industry which controls it. The undesirability of this from the standpoint of the public and connecting carriers is apparent."

Proposed Construction of Line by Perry & Southeastern Ry., 124 I.C.C. 346.

"Authority to construct the proposed new line will not be granted until we are fully satisfied that a use of the existing rail routes between the Ohio River and the Youngstown district which will produce substantially the results proposed by the applicant is impracticable."

Construction of Branches by Pittsburgh L. & W. R. Co., 150 I.C.C. 43, 150 I.C.C. 619.

"I am not in sympathy with the idea that a carrier can have anything resembling a proprietary interest in traffic or that there is any traffic here for example which 'belongs' to the Pere Marquette or that can properly be spoken of as 'its' traffic."

Proposed Construction by G. R. & I. Ry. Co., 145 I.C.C. 564.

"The record does not indicate any urgent need or at present any great public convenience to be served, to justify at this time the construction of the proposed line of railroad. Del Rio & Eagle Pass and the districts surrounding those municipalities are served by the Southern Pacific and the service is generally satisfactory".

Del Rio & N. Ry. Co. Proposed Construction, 187 I.C.C. 244.

"While one of the purposes of the Transportation Act of 1920 was to preserve competition between carriers; the provisions of paragraphs (18) to (20), inclusive, of section 1, negative any presumption that it was the purpose of Congress to permit the construction of new and competitive lines of railroads where existing facilities are adequate or can be made so by the exercise of available administrative remedies."

Public Convenience, Application of Utah Terminal Ry., 72 I.C.C. 94.

We have cited these railroad cases to demonstrate that when a railroad seeks to build a new line, the Commission has consistently decided that the question of public convenience and necessity requires consideration of existing adequate railroad service. The last citation above indicates a complete agreement by the Commission with the congressional intent on that score.

Proof Required of Independent Motor Carriers

The Commission has consistently adhered to rigid requirements with respect to the proof that must be offered by independent motor carriers in order to establish public convenience and necessity. Outstanding among these requirements has been the demand that the applicant must show either that there is no existing service or that the existing service fails to meet the public requirements and that the public needs the additional service proposed by the applicant.

Mere carrier convenience or mere improvement of the service of a particular carrier has not been deemed sufficient to establish public convenience and necessity, particularly if the result is additional competition.

Applicants have also been required to show that existing carriers cannot supply the deficiency in existing service.

Implicit in the statute and in the decisions is the holding that an applicant must show that the proposed service "will be required by the (1) public *convenience* and (2) public *necessity*. Proof of one of those elements is not treated as proof of the other. In an early motor carrier case (1937) the Commission said:

> "There is no showing that there is a substantial public demand for applicant's services or that the existing transportation facilities are inadequate to

efficiently serve the needs of the public. *The evidence does not disclose that applicant proposes to institute a service of such character that it cannot be supplied or performed by carriers who may have established rights in the considered territory.* Obviously the considered operations are for the convenience of applicant rather than for the convenience of the public." *Rolfsmeyer Common Carrier Application*, I M.C.C. 652 (Italics ours).

In another case the Commission found that an applicant seeking to establish a new service between Chicago and Detroit was attempting to invade a territory served by a great many existing lines. After commenting on the fact that the applicant had been operating and had secured some traffic, it pointed out:

> "*No claim is made that adequate facilities for transportation are not now available in the particular territory involved.* Preference of a shipper for the service of a certain operator does not establish the need for such service on the part of the shipping public to be served, as required to be shown by the provisions of the Act." *Merrill & Hamel, Inc., Common Carrier Application*, 8 M.C.C. 117 (Italics ours).

Those early cases have since been followed by many other decisions that repeat and strengthen this interpretation.

The Commission held in other early cases that the applicant has the burden of showing that the existing service is not adequate,

> "Where a certificate is sought in the transportation of commodities generally and to serve a public already served by railroad, express and motor carrier, the burden of proof is upon applicant to show that the latter are not rendering a type or character of service which satisfies the public need and convenience and that the proposed service would tend to correct or substantially improve that condition." *Norton Common Carrier Application*, 1 M.C.C. 114.

"The fact that in isolated cases the present operating bus line was unable to carry passengers on scheduled trips is not a sufficient basis to justify the Commission in granting a certificate of public convenience and necessity to another bus line, *unless it is shown that the present bus line, railroads and steamship facilities are inadequate and inconvenient to the traveling public, and that the proposed facility would eliminate such inadequacy and inconvenience.*" *Blue Nose Bus Co. Common Carrier Application*, 1 M.C.C. 173 (Italics ours).

"Aside from a willingness and ability to engage in the operation of motor vehicles as a common carrier, under the provisions of the Act, there must be an affirmative showing that the service is not only required in the convenience of the public proposed to be served, but that it is a necessity on the part of such public. *The latter element includes a showing that the present facilities are inadequate for the transportation of the described commodities between the points involved.*" *George Edmund Jackson, Common Carrier Application*, 7 M.C.C. 656, Decided June 3, 1938, 1 F.C.C. 205. (Italics ours).

"The substantial question here is whether the evidence establishes that continuance of applicants' service is required by the public convenience and necessity. We are of the opinion and find that it does not. *The present bus and rail service of protestants described above appears to be adequate for all purposes. Those carriers have been rendering service in the territory for some time, and, in the absence of any evidence that their service is unsatisfactory or deficient in any respect, or that applicants' service is required by the transportation needs of the public residing in the territory served we are not convinced that there are sufficient grounds for permitting applicants to continue their present operations.*" *White Circle Line Common Carrier Application*, 1 M.C.C. 585 (Italics ours).

Those principles which were laid down by the Commission early in the administration of the Motor Carrier

Act, have been consistently followed in all cases involving applications by independent motor carriers for the transportation of general commodities.[13]

State Court Decisions

There are a number of decisions by State Supreme Courts on the question of what is required to prove public convenience and necessity. While all state statutes are not precisely the same, the use of the term "public convenience and necessity" has been common. In substance, the state courts have held that an applicant must show either an absence of motor carrier service or that such service is inadequate. In case after case the courts have said that if there is reasonably adequate service already in the field, a new certificate cannot be granted.[14]

A number of the cases specifically hold that it is not enough to show that the public convenience will be served to some extent by the proposed operation. The Courts

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[13] *Davidhizer Common Carrier App.*, 7 M. C. C. 133;
Clark Common Carrier App., 1 M. C. C. 445, 448;
Wellspeak Common Carrier App., 1 M. C. C. 712, 715;
Podolsky Contract Carrier App., 2 M. C. C. 653, 654;
Lake Champlain Transport Lines Contract Carrier App., 4 M. C. C. 125, 128;
Motor Exp. Inc. Contract Carrier App., 11 M. C. C. 127, 129;
Georgia Motor Exp. Inc. Common Carrier App., 10 M. C. C. 159, 164;
Rabinowitz Common Carrier App., 4 M. C. C. 587, 588;
Rolfsmeyer Common Carrier App., 1 M. C. C. 651;
Brundage Common Carrier App., 11 M. C. C. 187, 190;
Carpenter Common Carrier App., 17 M. C. C. 693, 697;
Sullivan Common Carrier App., 18 M. C. C. 19, 20-21;
Karsen Contract Carrier App., 31 M. C. C. 613, 616;
Stucki Wittwer, 34 M. C. C. 756, 759;
System Freight Service, 28 M. C. C. 407, 410;
Rutland Common Carrier App., 27 M. C. C. 531, 532-533.

[14] *Chicago Motor Bus Co.* v. *Chicago State Co.*, (1919) 287 Ill. 320;
Choate v. *Commer Commission*, (1923) 309 Ill. 248;
Egyptian Transportation System v. *L. & N. R. Co.*, 321 Ill. 580;
Superior Motor Bus Co. v. *Community Motor Bus Co.*, (1926) 320 Ill. 175;
Cincinnati Traction Co. v. *Public Utilities Com.*, (1925) 112 Ohio St. 699;
Coney Island Motor Bus Corp. v. *Public Utilities Com.*, (1926) 152 N. E. 25.

have pointed out that there must be a showing that the public necessity also requires the service.[15]

In an Ohio case the Court, in interpreting the phrase "public convenience and necessity", said:

> "Perhaps it will not do to give the word 'necessity' its literal meaning and hold that, before a certificate can issue, there must be an absolute requisite for a motor transportation service; but it must not be wholly devitalized by interpreting it as synonymous with convenience. *Necessity, perhaps, in its reference to transportation facilities, may best be construed as contemplating a definite need for a public transportation service in a territory where no reasonable adequate public service exists.* It does not contemplate that every prospective customer may have a non-stop service from the point where he becomes a passenger to the point of his destination, nor that he may have an airline between such points, but only that the public generally, in every territory sufficiently populous to justify the maintenance of a public transportation, shall have reasonably adequate service." *Canton East Liverpool Coach Co.* v. *Public Utilities Com.*, 123 Ohio St. 127 (Italics ours).

In an Illinois case we find a good expression of the general rule.

> "To authorize an order of the Commerce Commission granting a certificate of convenience and necessity to a carrier though another is in the field, it is necessary that it appear, first, that the existing utility is not rendering adequate service and it is but a matter of fairness and justice that it be shown that the new utility is in a position to render better service to the public than the one already in the field. It is in accord with justice and sound business economy that the utility already in the field be given an opportunity to furnish the service where it offers and is able to do

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[15] *Cooper* v. *McWilliams and Robinson*, (1927) 221 Ky. 320; *Barnes* v. *Consolidated Coach Corp.*, (1928) 223 Ky. 465; *Lykins* v. *Public Utilities Commission*, (1926) 115 Ohio St. 376.

so." *Chicago R. Co.* v. *Commerce Commission,* 336 Illinois 51.

In an Oklahoma case the Court said:

> "It should be made to appear that the inconvenience of the public occasioned by the lack of motor carrier transportation is so great as to amount to a necessity." *C. R. I. & P. Ry. Co.* v. *State,* (Oklahoma) 252 P 849.

This is a case of first impression before this Court, involving railroad applications for motor carrier rights. The only parallel case that we know of, is the decision by the Ohio Supreme Court in *New York Central Railroad Company* v. *Public Utilities Commission,* 123 Ohio St. 370; 175 N. E. 596.

The railroad filed an application for an intrastate certificate which was denied. In setting forth the contentions of the railroad, the Court said:

> "The contention that the finding and order of the Commission is unreasonable and unlawful is based principally upon the claims: (1) That the Commission should have considered the substantial economy to the railroad, and the resulting benefits to the public, which it refused to do. * * * It is disclosed that the real basis of the applicant's claim for a certificate is that the motor truck line which it would operate there under would be an auxiliary to its existing railroad line between the points named. Indeed, its application is based upon the claim that its operation of such a motor truck line over such route would result in better service at an ultimately less cost to the public." (p. 103)

After discussing the facts with regard to existing motor carrier service and the prior Commission and Court decisions, the Court said:

> "The applicant contends that this truck operation service should be authorized because it is not an isolated independent operation between points named,

but is rather a companion service to the service which it provides by rail, and in fact is a substitute for the local freight service formerly operated by it; further that such truck operations are confined to the movement between stations on the line of the railroad, where merchandise is received and delivered; that such operation involves no pick-up or delivery service and is thus made a mere substitute for a more costly local freight train service; further that the proposed operation is not in competition with the business of any existing motor transportation line, in that if this freight were not hauled by truck by this applicant it would be carried by its freight trains; and, further, that the major portion of the shipments handled by it are interstate shipments and cannot be readily separated from intrastate shipments." (p. 105)

In disposing of these arguments the Court said:

"These and other arguments made by the applicant should be addressed to the legislature rather than to the Public Utilities Commission and this court. The New York Central Railroad Company as an applicant for a certificate of convenience and necessity to operate a line of motor trucks over the highways of the state, and thereby transport freight from place to place within the state, is in no better or different position under the statute than any other applicant for such right and privilege. Under the statute there can properly be no discrimination in its favor, just as there can be no discrimination against it. It is the duty of the Commission under the statute in every case to take into consideration other existing transportation facilities in the territory for which a certificate is sought, and where it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate the Commission should refuse the application.

"This case as presented is exactly the same as it would be if the application were filed by any motor truck transportation company for a certificate covering territory fully and adequately served by duly certified operators. The test of public convenience

and necessity must be applied whether the applicant for a certificate to transport freight over the public highways of the state is a railroad company seeking to inaugurate so-called supplemental freight service over the public highways, or an exclusively motor transportation company. The rule to be applied under existing statutes is the same and must be uniformly and unversally applied and enforced. The best interests of and the most efficient services to the public do not require a greater number of motor trucks upon the highways of the state than are necessary to supply the public need for such transportation. The public benefit and not private benefit is of first and foremost importance." (p. 105-6)

At another point, in discussing this same question, the Court said:

"Construing these statutes, this court has frequently held that the granting of an application for such certificate is not warranted unless it appears that the public necessity and convenience require the proposed service, and, further, that another motor transportation company, if any, holding a certificate of convenience and necessity granted it by the Public Utilities Commission, covering the same route, is not rendering adequate service, and is not able, ready, and willing to provide the additional service, if any, found to be necessary." (p. 103-4)

The Court made a most pertinent observation when it pointed out that all of the arguments advanced by the railroad should have been addressed to the legislature. The Court in that 1931 case has very clearly set out the answer to every contention made by the railroads in this case.

In a State Commission decision in which a railroad was granted the right to inaugurate a stage line, the dissenting opinion, reviewed the railroad arguments and said:

"Under this pronouncement, authorization for the substitution by the rail carriers of rail transportation

by stage transportation will be a mere matter of routine and presumably the requested authority will be granted by ex parte orders, as no real need will exist for a public hearing." *Re Southern Pacific Motor Transport Company P. U. R.* 1929 A, (p. 204).

This statement fits the rule laid down by the Interstate Commerce Commission. The only test the railroad must meet is whether it wants the certificate, if the Commission's order is permitted to stand. It does not seem to have occurred to the Commission that the refusal of the railroads to make use of existing service and their refusal to bestow this alleged benefit upon the public on any terms except their own, is not proof that the public convenience and necessity requires the grant of the certificate. It has not been able to see with the clarity of the Ohio Supreme Court. If it had it would have observed, as did the Oklahoma State Commissioner, that there is no longer need for a hearing on any railroad application.

In the Case of Railroad Applicants for Motor Carrier Rights the Commission Has Departed From the Legal Standards of Proof of Public Convenience and Necessity.

On this question the full Commission's policy and the Motor Carrier Division's anaylsis of facts have not reached consistent results. The full Commission has now definitely crystallized a policy which plaintiffs contend is clearly contrary to law.

The Motor Carrier Division of the Commission recognized that it did not have the power to establish a different standard of proof for railroad applicants for motor carrier rights. In a case involving a railroad owned motor carrier, *Pennsylvania Truck Lines Extension*[16], the Division said:

[16] 34 M. C. C. 828 (decided July 23, 1942). (Full decision not published.)

"The purpose of this extension is to enable applicant to perform substituted service for the railroad in the handling of less than carload shipments between Dayton and Middletown, moving at rail rates and on rail billing * * *."

* * * * * * *

"Several shipper witnesses testified to a need for resumption of the service and it is clear that a public need exists for the performance of a substituted less than carload rail service between Dayton and Middletown."

* * * * * * *

"Conceding this public need, the controlling question is whether there is already available a motor carrier ready, able and willing satisfactorily to supply such service for the railroad. If so, there is no need for applicant's added service in this respect."

* * * * * * *

"There is no showing such as we have had in some cases, that the railroad would experience any difficulty whatever in coordinating its service with that of Continental. The past satisfactory performance by Continental of the identical service definitely negatives any such claim."

The only difference between the case above cited and quoted and the case at bar, is that in the cited case the applicant was a wholly owned railroad motor carrier subsidiary; whereas, in the case at bar the Seaboard Air Line directly and without the intervention of a subsidiary, applied for the rights.

The full Commission does not follow the sound policy set forth by the Division in the *Pennsylvania Truck Line* case, and the full Commission now grants rights to both railroads and railroad subsidiaries as a matter of policy and without requiring proof of convenience and necessity and without regard for the adequacy of existing services.

The Commission and the Division have not been consistent in their holdings and it follows that the Commission's order does not stand clothed with the doctrine of "administrative rulings long and consistently applied."

Crystallization of the Doctrine Which the Full Commission Now Applies to Railroads.

The doctrine of "railroad convenience" as distinguished from "public convenience and necessity" began to crystallize in the Kansas City Southern case[17]. Later the full same issues. Included in the consolidation where the several applications by the Seaboard Air Line Railway, intervenor here.[18]

In the first *Kansas City Southern* case (10 M. C. C. 221), Division 5 said:

> "Applicant is a wholly owned subsidiary of the Kansas City Southern Railway Company." (p. 222).

The report recites the terms of an agreement between the railroad and Herrin Motor Lines under which Herrin, an independent motor carrier, had performed this service for the railroad.

> "The agreement recites that applicant handles freight under rates filed with the Louisiana Public Service Commission between points on the line of the Kansas City Southern Railway Company and desires to engage the services of Herrin in transporting certain freight between the depots used by applicant. Herrin is required to provide at its sole cost and expense adequate forces and equipment for prompt movement of the freigh and equipment of 10,000 pounds carrying capacity, having inside dimensions

[17] *Kansas City Southern Transport Co., Inc.—Common Carrier Application*, 10 M. C. C. 221. Decided Nov. 12, 1938.
Commission consolidated a number of cases involving the

[18] *Kansas City Southern Transport Co., Inc.—Common Carrier Application*, 28 M. C. C. 5. Decided Jan. 24, 1941. (Including Seaboard Air Line Railway Company, Dockets MC 61438 and Subs 1 to 10, inclusive; and Subs 15 and 18.)

of 18 feet in length and 7 feet in width and height is specified; * * * employees of Herrin are to load and unload at all points * * * one schedule each way daily * * * is required; applicant is given the right at times convenient to Herrin to check Herrin's records for the purpose of verifying the correctness of charges made and credits allowed by Herrin; Herrin is required to release from its service any employee objectionable to applicant; * * *.

"In addition the agreement states in detail the responsibilities which are to be assumed by Herrin. Herrin agreed to indemnify and hold harmless the applicant from and against all loss, damage, costs, and expenses incurred on account of injuries to persons and loss of, or damage to, freight. Herrin further agreed to procure and keep in force public-liability and property-damage insurance on all vehicles used by it. * * * This blanket insurance covered the loss of, and damage or delay to, freight, issuance of false or fraudulent receipts or bills of lading, theft, embezzlement, and loss by robbery." (pp. 223, 224).

The Kansas City Southern Railroad later desired to extend the truck service and proposed to do so through a wholly owned subsidiary, and for that purpose made an agreement with its subsidiary as follows:

"By an agreement, dated May 12, 1933, between the railway and applicant, the railway agreed to permit applicant the joint use of its freight stations, facilities, and station agents. Applicant agreed to pay the railway a percentage of its gross transportation revenue and, in addition thereto, a percentage of the net income remaining to applicant after deduction of costs of operation. * * * It was further agreed between the parties that the railway assumed no liability to shippers for loss, damage, or delay to property transported by applicant." (p. 225).

This agreement was supplemented in part as follows:

"By supplemental agreement dated August 4, 1935, certain additional provisions were made specifically applicable * * *

"The Railway Company shall also furnish entire supervision of all of the Transport Company's affairs and operations, the solicitation of business for the Transport Company, station services of every character, including the execution of bills of lading, way-billing of shipments, the collection and remittance of transportation charges, the preparation of all general and station records and reports, the performance of all general and station accounting and generally to supervise the conduct and management of the business of the Transport Company." (p. 225)

The report next describes the motor carrier operations which the railroad proposes to conduct through its motor carrier subsidiary, and states:

"It is also proposed, however, to substitute truck operations for the present rail station-to-station way-freight service. Substitution of trucks for this service will result in the handling of certain traffic entirely by truck. Applicant and the railway contend in this connection that they cannot accord the service proposed, if only traffic which has received a rail haul to or from a key station is handled by applicant, and the intermediate station-to-station service is still performed by a way-freight train. Shipments moving a substantial distance will be handled wholly by truck only when the volume of the traffic is too light to make up a merchandise car between the points. Applicant is willing that any authority issued shall contain appropriate provisions limiting continuous handling by truck to a maximum distance of 250 miles. The railway operates over approximately 878 miles of track and maintains 93 agency stations." (pp. 226, 227).

The next portion of the report recites that the railroad has been able to increase its traffic by combining rail and motor service:

"In August 1935 experimental operation through applicant in the handling of merchandise traffic between Shreveport and Lake Charles entirely by motor vehicle was undertaken. Since the commencement of

this operation the less-than-carload traffic in that territory has increased over 60 percent, as compared with a 15-percent increase over the entire line of railway. The railway concludes therefore that the best method of saving its less-than-carload tonnage would be by the institution of coordinated rail-truck service over its entire line."

* * * * * * *

"A number of shipper witnesses testified that they prefer to use the railway's service to the greatest extent possible, because of the single responsibility involved and the maintenance of regular stations for the receipt, delivery, and storage of shipments. However, some of these witnesses, who are distributors of various commodities from Kansas City, pointed out the inadequacy of the present rail service which is compelling them either to narrow the territory of their operations or resort to other means of transportation." (p. 230).

The report next describes the improvements in railroad service which would be brought about by the use of trucks and the savings which the railroad would make if it substituted trucks (pp. 230, 231).

The next portion of the report discusses the service available to the public by independent motor carriers and the points they serve, together with certain statements respecting the quantity of equipment available (pp. 231, 232).

The report next recites the applicant's contention that the service, which they propose to offer is a new service, different from either rail service or truck service (p. 232).

The applicant railroad objects to cooperating with independent truck lines:

"Applicant suggests that the railway could not be expected, and would not be willing, to turn over its traffic at key points or between local stations to its direct competitors who would be primarily interested

in attempting to divert such traffic to their own truck lines for the longest possible haul. * * * Applicant emphasizes the argument that even if the railway were willing to establish joint rates or through routes with protestants, the rail connections of the railway could not be expected to do so." (pp. 232, 233).

The report next discusses the position of the protestants:

"Protestants are of the view that entry of applicant into the proposed territory as a transportation factor would mean loss to present motor carriers of a substantial volume of business. They assert that applicant, if given the full financial support of the parent rail company, could attract business that it would not secure logically or naturally, and that it could in a short time produce confusion that would reduce present motor carriers to a position of subserviency to the rail carriers. Protestants urge that the independence of motor carriers from the rail carriers must be maintained, if the inherent advantages of motor-carrier transportation are to be preserved. It is contended that the present motor-carrier service in the territory is entirely adequate; that institution of the proposed service would not improve the service that might be offered by coordination of existing motor and rail services; and that applicant has failed to sustain its burden of showing public need for the proposed operations."

* * * * * *

"Protestants emphasize the fact that the railway has not requested them to join in any plan of coordinated rail-truck service. They believe that, if it be considered that the proposed service is required by the public convenience and necessity, the present truck operators should be granted the privilege of attempting to coordinate their service with the rail line. It is urged that present motor carriers are entitled to such opportunity before it is assumed that such coordinated rail-and-truck service is not feasible and practicable." (p. 233).

The report next discussed a number of Supreme Court decisions and in the conclusions said:

> "The only substantial question is whether it has been shown that the proposed service 'is or will be required by the present or future public convenience and necessity.'"

The report then cited some Commission decision wherein certain decisions by this Court were referred to and quoted. (Appellants will discuss these Supreme Court cases later.)

The Division then said:

> "Moreover, it is clear that this coordinated rail-motor service will be *a new form of service,* utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone. That Congress contemplated such coordination is shown by section 202(a) of the act, which declares it to be the policy of Congress, among other things, to 'improve the relations between and coordinate transportation by and regulation of, motor carriers and other carriers.' It is also shown by section 213(a)(1), which permits a railroad to acquire a motor carrier, provided we find that the acquisition will promote the public interest by enabling the railroad to 'use service by motor vehicle to public advantage in its operations', without undue restraint of competition."[19]

The report next discusses the *refusal* of the railroads to cooperate with independent motor carriers and points out that while the Act permits joint rates between railroads and independent motor carriers the Commission does not have the power to require their establishment (pp. 235, 236).

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[19]Section 213(a)(1) by the Transportation Act of 1940 was incorporated within Section 5(b).

The report continued:

"It remains to be determined whether, in accordance with the definition of 'public convenience and necessity' in the *Pan-American case, supra,* 'it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.'" (p. 236).

* * * * * * *

"The coordinated service which the railway contemplates establishing with applicant would embrace the *entire system of the railway, and each and every one of its stations.*" (p. 236).

"As has been indicated, protestants contend that if applicant be given the certificate which it seeks, they will suffer severely from the new competitive service which it will offer, not only in conjuntion with the railway but on its own account. Competition is already so keen in the territory concerned that protestants can ill afford any further diversion of business. They particularly fear the competition of a motor carrier which, like applicant, would not be wholly dependent upon its own resources but would have the financial support of a parent rail company and, in addition, the benefit of the traffic-soliciting force and prestige of the latter and the use of many of its facilities. They go so far, indeed, as to assert that existence of independent motor carriers cannot in the long run be maintained, if railroads are to be allowed to go freely into the motor-carrier business, and they express the belief that the inherent advantages of motor-carrier transportation cannot be preserved under such conditions. Interpreting their views, the thought seems to be that railroad-controlled motor carriers mught ultimately be able to prevail over independent competitors, not because of any superiority in service or operations, but through their ability to draw upon the financial and other resources of their parent companies, and that the motor-carrier industry is more likely to develop in inherent strength and efficiency if it continues, as in the past, to remain largely in independent hands.

In *Pennsylvania Truck Lines, Inc.—Control—Barker M. Frt.*, 1 M. C. C. 101, 111, we expressed a somewhat similar thought as follows:

"* * * we are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with, rather than auxiliary to, their rail operations. The language of section 213, above quoted, is evidence that Congress was not convinced that this should be done. Truck service would not, in our judgment, have developed to the extraordinary extent to which it has developed if it had been under railroad control. Improvement in the particular service now furnished by the partnership might flow from control by the railroad, but the question involved is broader than that and concerns the future of truck service generally. The financial and soliciting resources of the railroads could easily be so used in this field that the development of independent service would be greatly hampered and restricted, and with ultimate disadvantage to the public.

"Protestants now meet with the competition of the railway but, in the case of the merchandise traffic handled in less-than-carload lots, that competition has not been particularly formidable. The railway now proposes to improve the handling of that traffic by establishing a coordinated truck-rail service in connection with applicant. As we have seen, the conclusion is warranted that there is a public need for this coordinated service, that it is *a new and different character of service* which neither the railroads nor the trucks alone can supply, and that it cannot be furnished effectively and well except through the use of applicant's facilities. We do not believe that the development of this new form of service will *seriously endanger* the operations of protestants, but, *in any event*, the public ought not to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers." (pp. 237, 238)

Having recognized that what the railroad proposes to do constitutes a "*new type of service*" and having found that there was a need for some part of this new service, the Division then undertakes to point out wherein the railroad failed to show public convenience and necessity and wherein it was necessary to safeguard independent motor carriers from railroad domination.

> "However, while it has been shown the public convenience and necessity require the establishment of a service by applicant which will be coordinated with that of the railway, the record is devoid of proof that there is any need for the institution of service by applicant which is not required in such coordinated operations. In other words, there are *plenty* of motor carriers in this territory and it has not been shown that there is *any need whatever* for another motor carrier to furnish service such as the existing carriers furnish and having no close relation to rail operations. It follows that the certificate to be granted to applicant should be limited accordingly.
>
> "We now come to the question of what restrictions shall be imposed in the authority to be granted so as to limit applicant's operations to those auxiliary to, or supplemental of, rail service and to prevent it from engaging in operations which will duplicate and compete with service now adequately provided by carriers by motor vehicle. * * * However, if existing operations of carriers by motor vehicle between such stations are to be protected, some limitation of the service to be rendered by applicant between these stations must be imposed. To accomplish this purpose, applicant has suggested that its hauls by motor vehicle might be limited to distances not exceeding 250 miles. It has also occurred to us that we might impose a limitation that applicant shall not transport any shipment over the entire distance between any two key points (terminals and breakbulk points) on the lines of the two rail carriers. Either of these limitations would leave applicant free to transport shipments wholly by truck from origin to destination over considerable distances, and therefore would protect only

the longer hauls of existing carriers by motor vehicle. The shorthaul traffic handled by such carriers, particularly from Kansas City and the other important manufacturing and jobbing centers on applicant's routes, constitutes a substantial portion of their business and would be unprotected. *We are of the opinion that neither of these limitations would be adequate.*

"Applicant's evidence, as well as that of the shippers who appeared, as to the need for improved service between the stations on the lines of the two rail carriers, relates almost entirely to the movement of shipments partly by rail and partly by motor vehicle. With the possible exception of some small stations, it is clear that the present facilities for the movement of freight wholly by motor vehicle between stations on the two rail carriers' lines are *adequate.* Consequently, we are of the opinion that applicant should be limited to the transportation of shipments which it receives from or delivers to either one of the two rail carriers under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail." (p. 239).

The Division then made certain findings and imposed certain conditions, among them being condition No. 3 as follows:

"3. Shipments transported by applicant shall be limited to those which it receives from or delivers to either one of the railways under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail." (All emphasis supplied).

Summary of the First Kansas City Case—10 M. C. C. 221.

To begin with, this was a decision by Division 5, composed of three commissioners. The decision was apparently written by Commissioner Lee. Commissioner Eastman filed a separate concurring opinion and Commissioner Rogers dissented.

The first legal point involved in the decision is that the Division concluded that it had legal authority to recognize and authorize a "*new type of service*" which differed from both rail service and motor carrier service. These appellants contend that there is no authority in law for such a conclusion.

Next, the Division found that the territory was *adequately* served by existing independent motor carriers, but nevertheless the Division concluded that the public should not be deprived of this *new service* even if it did take traffic away from existing motor carriers. That raised the second legal point. These appellants contend, that upon a finding by the Commission, that the territory was adequately served by existing motor carriers, the Division then and there *exhausted its jurisdiction* and could not issue a new carrier a certificate of convenience and necessity.

The attempts on the part of the Division to recognize the existence of or need for a new type of service was beyond its powers and was a matter for Congress alone to consider. The sincere efforts of the Division to safeguard the interests of independent motor carriers, by restrictions and conditions, was in legal contemplation an idle gesture and a nullity and *became a factual nullity when the full Commission removed the conditions.*

Immediately following this decision, the full Commission reconsidered the matter and without hearing any evidence, proceeded to eliminate the restrictions and conditions which Division 5 had imposed to protect independent carriers. The decision by the full Commission, on reconsideration, is set forth in full in plaintiff's bill of complaint, as Exhibit M.[20] We will discuss that decision and others later on. But before doing so, we will take up certain decisions by this Court, as they will serve to il-

[20] R. 109.

lustrate the errors of both the Division and the Commission.

Supreme Court Decisions on Convenience and Necessity

We have already suggested that the Division in undertaking to certificate a hybrid operation, part rail and part motor, exceeded its statutory jurisdiction, and we further pointed out that it disregarded its finding, that the territory was *adequately* served by independent carriers, and proceeded to certificate the hybrid operation on the basis of *railroad convenience.*

The Commission did not find that the independent carriers would *not* be hurt but merely said that it did *not believe* they would be hurt, and then went on to say that *in any event* the hybrid operations should be authorized.

Through a number of succeeding decisions the Commission has reversed and modified the early reports of Division 5; has clarified its position and *crystallized a policy to issue to every railroad applicant motor carrier rights upon the mere asking and without any regard for the effect on or injury to independent motor carriers.*

In order to fully appreciate the extent to which the Commission has gone beyond legal bounds and has acted arbitrarily and capriciously, reference is made to some of the decision by this Court on the question of public convenience and necessity and the significance of those provisions as they appear in the Interstate Commerce Act.

With respect to railroads, the Commission was first given jurisdiction over the extension and abandonment of lines and issues involving public convenience and necessity by the Transportation Act of 1920.[21]

The Commission acquired similar jurisdiction over motor carriers by the Motor Carrier Act of 1935.[22]

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[21] 41 Stat. 477; 49 U. S. C. A. 1 (18)-(22).

[22] 49 Stat. 551; 49 U. S. C. A. (306)-(308).

In an action by one railroad to prevent another from constructing a line for which no certificate had been secured, *Texas and New Orleans R. Co.* v. *Northside Belt R. Co.*,[23] this Court said:

> "The purpose of paragraphs 18 to 22 is to prevent interstate carriers from weakening themselves by constructing or operating superfluous lines, and to protect them from being weakened by another carrier's operating in interstate commerce a competing line not required in the public interest." (Citing cases).

The showing of public convenience and necessity is required not only for the purpose of extending lines in order to render additional public service, but serves the purpose of preventing the extension of lines and the impairment of the ability of existing lines to continue to render adequate public service.[24]

A clear statement of the issues at bar was made by this Court in another case in which a railroad sought to prevent a competitor from extending its lines *Texas and P. R. C.* v. *Gulf C. and F. R. C.*[25]

> "A truer guide to the meaning of the terms extension and industrial track, as used in paragraphs 18 to 22, is furnished by the context and by the relation of the specific provisions here in question to the railroad policy introduced by Transportation Act, 1920. By that measure, Congress undertook to develop and maintain, for the people of the United States, an adequate railway system. It recognized that preservation of the earning capacity, and conservation of the financial resources, of individual carriers is a matter of national concern, that the property employed must be permitted to earn a reasonable re-

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[23] *Texas and New Orleans R. Co.* v. *Northside Belt Railway Co.*, 276 U. S. 475, 72 L. ed. 661. Decided April 9, 1928.

[24] *R. Com. of Calif*, v. *So. Pac. Co.*, 264 U. S. 331, 68 L. ed. 713.

[25] *Texas & P. R. Co.* v. *Gulf & C. & S. F. R. Co.*, 270 U. S. 266, 70 L. ed. 578.

turn; that the building of unncessary lines involves a waste of resources and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit; and that when a railroad inflicts injury upon its rival, it may be the public which ultimately bears the loss. (Citing cases). The act sought among other things, to avert such losses."

* * *

"But where the proposed trackage extends into territory not theretofore served by the carrier, and particularly where it extends into territory already served by another carrier, its purpose and effect are, under the new policy of Congress, of national concern. For invasion through new construction of territory adequately served by another carrier, like the establishment of excessively low rates in order to secure traffic enjoyed by another, may be inimical to the national interest."

The Commission should not administer the law with single-mindedness. The Supreme Court has required it to take into consideration the interests of both interstate and intrastate commerce.[26] Plaintiffs contend that the Commision cannot administer the certificate provisions, where railroad interests and truck interests are both involved, without considering the interests of both.

Eastern-Central M. C. Assn. v. *U. S.*, ... U. S. ....., 88 L. ed. 431.

In another case involving the federal policy, *Texas* v. U. S.[27] and concerning the removal of railroad shops, this Court said:

"It is a primary aim of that policy to secure the avoidance of waste. That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public."

[26] *Colorado* v. *United States*, 271 U. S. 153, 70 L. ed. 878. Decided May, 3, 1926.

[27] *Texas* v. *United States*, 292 U. S. 522, 78 L. ed. 1402.

Plaintiffs here contend that the Commission has approached the subject with a single-mindedness which has caused it to view only the matter of railroad convenience and economics and to disregard service and economics of competing transportation agencies. This is illustrated by the Commissions refusal to even permit protestants to introduce evidence to show that they would be hurt. We will deal with the refusal to hear evidence later in this brief.

It is clear from these decisions, that the Commission cannot through neglect disregard the interests of any competing transportation agency in applying legal criteria for determination of public convenience and necessity.

The national transportation policy is not a railroad transportation policy, but is a transportation policy applicable equally to all forms of transportation.

It may well be that the Commission having existed for 50 years in an atmosphere of railroad transportation is disposed to emphasize the importance of railroads. But Congress gave it no power to discriminate and the Commission is bound by the Interstate Commerce Act to accord equal consideration and equal treatment to all forms of transportation.

The Commission may cite *C & O Ry.* v. *U. S.*, 283 U. S. 35, 75 L. ed. 824, in support of the proposition that they have considerable administrative discretion in determining public convenience and necessity a view which we do not challenge. That case involved competing railroads. A certificate was issued which enabled one of the railroads to construct a short branch line which would eliminate bad grades and circuituous routes. On facts, the case is consistent with the position the Commission has taken in connection with motor carriers. In *Dixie-Ohio-Extension*, 17 M. C. C. 735, the Commission authorized a route through West Virginia to avoid the restrictive vehicle

size and weight laws of the State of Kentucky. Those situations were local and had nothing to do with national policy. We cannot imagine this Court approving a certificate because a railroad refused to make joint rates or otherwise refuse to cooperate with other railroads.

Summary of Supreme Court Decisions

Basically, provisions authorizing certificates of convenience and necessity are not merely grants of authority to conduct operations but are restrictions and limitations on the right to operate. Without the provisions of law restricting operations, everyone would be free to engage in all kinds of operations and without regard for public need or injury to established transportation facilities. Viewed in this light, the restrictions surrounding the issuance of certificates of convenience and necessity were as this Court said, clearly designed to accomplish the following purposes;

1. To avoid the waste involved in unnecessary duplication of facilities.

2. To protect the public interest against the necessity for supporting excess transportation facilities.

3. To prevent destructive competitive practices which affect the public interest.

Applying these principles to the present case, we have the proposition that all of the advantages which motor carrier service offers, is already being afforded the public by independent motor carriers. The fact that the railroad may save some money and make faster deliveries, if they use motor service, is sufficient reason why the railroad should cooperate with the independent motor carriers; but it is no reason why the railroads should go into the motor carrier business and burden the public with unnecessary duplications of transportation facilities.

If rail service is expensive and wasteful, it is no cure for such waste, to create more waste through unnecessary duplication of facilities. The public interest in having railroads eliminate waste in the handling of merchandise traffic, cannot be so great that the public interest would be served by destroying the economic stability of the motor carrier industry, which will result from permitting the railroads to engage in both types of transportation.

The railroad case does not lie in their inability to handle merchandise traffic on an economical basis, but lies in their refusal to better their situation through cooperation with the independent motor carriers.

So it has become the policy of the Commission to permit the railroads to fashion a showing of public convenience which rests on nothing more substantial than their refusal to abide by the National Transportation Policy.

Further Development of the Commission's Theory that Railroads Are Entitled to Motor Carrier Certificates as a Matter of Right and Culminating in the Second Kansas City Southern Case, 28 M. C. C. 5.

In the second *Kansas City Southern* case, 28 M. C. C. 5, the full Commission consolidated a number of cases involving similar issues and reviewed and modified the decision of Division 5, in the first *Kansas City Southern* case, 10 M. C. C. 221.

The cases involved and consolidated included the applications of the Seaboard Air Line Railway Company, intervenor here.

The decision by the full Commision in the second *Kansas City Southern* case is set forth in the complaint as Exhibit M.[28]

Between the first and second *Kansas City Southern* cases, decided November 12, 1938 and January 24, 1941,

[28] R. 109.

respectively, the Commission gradually clarified its ideas and simplified its language. On July 11, 1939, Division 5 reversed the Joint Boards and granted the Seaboard Air Line Railway, intervenor here, all the rights which it had applied for. That decision is reported in 17 M. C. C. 413 and is set forth in full as Exhibit "L" of the complaint.[29]

The Division said:

> "While the evidence indicates that in most instances there is adequate motor-carrier service over the considered routes it is also clear that applicants' proposed service will expedite deliveries of less-than-carload shipments which now move by rail."
>
> • • •
>
> "There seems little question as to the proposed rail-truck coordinated service being in the public interest *nor does it appear from the records made in these cases* that there will be any great diversion of traffic from existing independent motor carriers. However, the only need shown of record is for service which is strictly supplemental of, or auxiliary to, and coordinated with applicants' rail service and the certificate granted herein will be limited accordingly. The limitations contained in the findings below are similar to those prescribed by us in the *Illinois Central* and *Kansas City Southern* cases, *supra*.
>
> "We find that the present and future public convenience and necessity require operation by applicants as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities between the points and over the regular routes described in the appendix hereto, serving the intermediate and off-route points referred to, and subject to the following conditions:
>
> "(1) The service by motor vehicle to be performed by applicants shall be limited to service which

[29] R. 81.

is auxiliary to or supplemental of the service of the Seaboard Air Line Railway;

"(2) Applicants shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway;

"(3) Shipments transported by applicants by motor vehicle shall be limited to those which move under a through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail.[30]

"(4) Such further specific conditions as we in the future may find it necessary to impose in order to restrict applicants' operations by motor vehicle to service which is auxiliary to or supplemental to the rail service of the Seaboard Air Line Railway."[31]

It will be noted that the Division found that generally there was adequate independent motor carrier service. The Division also found that the only service which applicants had shown a need for is that "which is strictly supplemental of, or auxiliary to, and coordinated with applicants' rail service".

The Division found that it does not "*appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carrier*".

The Court will please note that the Commission did not find on the record that there would be no diversion of traffic. The Commission found that there was *no evidence upon which a finding could be made.* That was the Commission's fault, and that is why these appellants are complaining because the Commission excluded the evidence.

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[30]This condition has been removed by the full Commission. 28 M. C. C. 5, R. 109.

[31]R. 81, 105.

The real position of the Commission was finally set out in simple language in *Pacific Motor Trucking Company* (a railroad subsidiary), 21 M. C. C. 761, decided February 16, 1940:

> *"The points in question are admittedly served by other motor carriers, and protestants on exceptions contend that public convenience and necessity therefore do not require the proposed operation. While adequate motor-carrier service, as such, is no doubt available, we have somewhat consistently refused to compel rail carriers to make their coordinate efforts dependent on competing motor carriers.* • • • We have in several instances granted similar authority to other carriers. Illinois Central R. Co., 12 M. C. C. 485, Kansas City S. Transport Co., 10 M. C. C. 221, Seaboard A. L. Ry. Co., 17 M. C. C. 413" (763-4) (Italics ours).

Will the Court please note the Commission's frank admissions that *"adequate motor carrier service, as such, is no doubt available."*

In many other cases the Commission contented itself by merely reciting that the protestants claim that they could furnish the service and then concludes:

> "Substantially similar contentions were advanced by certain protestants in Kansas City Southern case, supra, and our views with respect thereto are amply set forth therein." *Mo. Pac. R. Co.*, 22 M. C. C. 321, decided March 23, 1940.

The Commission made no effort to dispose of the claim that the protestants could furnish the service.

We have now reached the point where it is crystal clear that the adequacy of existing motor carrier service is not given any consideration whatever by the Commission in issuing additional motor carrier certificates to railroads.

We come to the case of *Indiana R. Co. Extension—Fort Wayne via Muncie*, 27 M. C. C. 176 (decided December 23,

1940). Here we find some appreciation, of where the Commissions policy was leading. Commissioner Patterson, dissenting:

> "Numerous common-carrier motor-truck lines operate in direct competition with applicant's railroad. It is because of this competition and a preference of the shipping and traveling public for motor transportation that traffic of the railroad has been reduced to a point where the cost of operations exceeds the revenues. For this reason division 4 in Indiana R. Receiver Abandonment, 240 I. C. C. 359, permitted abandonment of applicant's railroad lines.
>
> "Here the majority of division 5 proposes to find that public convenience and necessity require the operation by applicant as a common carrier by motor vehicle over the same routes as traversed by the rail lines and over an additional route. *The fact that applicant did and does operate a railroad is not proof that public convenience and necessity require operation by it as a motor carrier. The law requires the same evidence of convenience and necessity from this applicant as from any other.* The facts negative such a showing. The existing truck lines must have adequately handled the traffic which the report of division 4 finds was diverted from applicant's railroad to them because of the public's preference. This being so, why is another truck line now required? *Its establishment can only result, if it is to be successfully operated in a diversion of traffic from existing truck lines.*" (179) (Italics ours).

We have now reached the point where the Commission issues motor carrier certificates to railroads as a matter of right under any circumstances and without restrictions or limitations of any kind. They do so without regard for the adequacy of existing motor carrier service, not only when the railroad wishes to parallel its lines with motor carrier operations, but extend the privilege to points and routes where the railroad does not even exist because of abandonment and of course there could be no railroad service to improve.

In the first *Kansas City Southern* case, 10 M. C. C. 221, Division 5, imposed Condition No. 3, hereinbefore referred to, restricting railroads to use the motor carrier service for traffic having a prior or subsequent movement by rail.

The railroads were dissatisfied with that restriction and applied to the Commission to have it removed. Without any evidence and without even a hearing, the full Commision reconsidered the order of Division 5 and eliminated the restriction calling for a prior or subsequent movement by rail. That was done in the second *Kansas City Southern* case, 28 M. C. C. 5, decided January 24, 1941. Many railroads had protested against having any restrictions put in their certificates and the Commission consolidated the cases and included the applications of the Seaboard Air Line Railway, intervener here. At one fell swoop the Commission removed the restriction calling for a prior or subsequent movement by rail for all railroads.

In the reopened *Kansas City Southern* ease the full Commission said:

> "As stated, the representatives of the latter urge that, if the railroads would cooperate with them, the desired coordinated service could be adequately provided by the use of existing facilities and without the grant of any new operating authority. This contention was sufficiently discussed by division 5 in the prior reports. As pointed out in the *leading* case, 10 M. C. C. 221, we are *without jurisdiction to compel coordinated service* by the carriers by rail and carriers by motor vehicle. It could only be accomplished through the medium of through routes and joint rates; we have no power to require their establishment, and accordingly any such plan of coordination must depend upon voluntary cooperation; * * *
>
> * * *
>
> "It must be borne in mind, as above indicated, that in all of these cases the railroad has been and is transporting the traffic in question between its stations and

> is under obligation to continue to do so. What it is seeking is not to enter a new field of service but to substitute a more efficient for a less efficient means of service. * * * One competitive carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest" (10).

But once more we find some members of the Commission unable to completely agree with the Commissions policy. Commissioner Lee, in objecting to the removal of the restriction, that when the restriction was removed the railroad owned operations would be in full and complete competition with existing motor carriers. Commissioner Lee pointed out that in the first report of the case the Commission had found:

> "that there are plenty of authorized motor carriers in operation throughout the territory in which the Kansas City Southern Transport Company proposes to operate; that, with the possible exception of some small stations, the present facilities for the movement of freight wholly by motor vehicle between the points which it proposes to serve are adequate; that the record fails to establish that there is any need whatever for it to provide a service such as the existing motor carriers are furnishing; and that public convenience and necessity require only the establishment by it of a motor-carrier service which will be auxiliary to, or supplemental of, rail service of its parent railroad company and which will not *duplicate motor carrier service now adequately provided by existing motor carriers.*" (23).

Commissioner Lee argued that, in its first decision, the Commission had justified its grant of authority by claiming that the operations *would not be competitive with motor carriers because of the nature of the restrictions attached.* He recognized that it was necessary to find that

existing service was not adequate, before a rail applicant could be granted a certificate. The Commissioner said:

> "The result is that they are granted authority to engage in motor carrier operations and to furnish motor carrier service which are not coordinated with or in any wise *tied into operations or rail service but* which, on the contrary, *will duplicate the operations* and the service provided by existing motor carriers and found to be adequate to fill the public need" (24). (Italics ours.)

Commissioner Lee used the most expressive language we have found in any of the cases:

> *"The act does not authorize us to grant a certificate or permit, authorizing motor-carrier operations by a railroad or its subsidiary, on any less proof of public need therefor than is required of other applicants for such operating authority.* It may be, as stated in the report, that 'one competitive carrier (a motor carrier) has no vested right in the continuation by another (a railroad) of an inefficient method of operations. *Neither does a* railroad or its subsidiary have a 'vested right' to inaugurate new motor carrier operations in competition with existing authorized motor carriers without establishing public convenience and necessity therefor." (p. 24.) (Italics ours.)

Nevertheless the condition requiring a prior or subsequent movement by rail was removed by the full Commission.

Apparently the Commission felt that it had gone pretty far therefore, without a scintilla of evidence or any hearing whatever, it adopted a new restriction called "key points". By key points the railroad could haul traffic that never touched the railroad but it could not haul that traffic through more than one key point.

The Commission had no evidence upon which key points could be selected.

The next step was to get rid of the key point restrictions and that has already been substantially accomplished.

In the case of *Atlantic Coast Line Railroad Company Extension of Operations—Virginia-North Carolina*, 30 M. C. C. 490, decided September 12, 1941, the Commission said:

> "We are also of the opinion that public convenience and necessity require the proposed service. What applicant is seeking is not to enter a new field of service but to substitute a more economical and flexible service. Applicant has been and is transporting the traffic in question by rail, and it is under obligation to continue to do so. The proposed coordinated rail-truck service will result in a saving and a more efficient handling of merchandise traffic as well as in an improvement in the handling of carload traffic. *Protestants assert that Thurston Motor Lines serve all of the points involved, and it may be, as contended, that existing moto carrier service is adequate, but one competitive carrier or class of carriers has no vested right in the continuation by another of an inefficient method of operation. Rather, we believe it to be the policy of Congress and the proper function of this Commission to foster any form of progress in transportation which will serve the public interest.*" (p. 492.) (Italics ours.)

We paraphrase the Commission's observation and say: "*that no railroad or class of railroad has a vested right to engage in the water carrier, motor carrier, or air carrier business simply because a railroad is an inefficient method of transportation for certain traffic under certain conditions.*"

In a still later case the Commission reversed another denial order of a Joint Board. The Commission, in doing so, said:

> "While the Joint Board recommended that the application be denied, it did so not because it believed

the proposed coordinated service would not serve the public interest, but because it believed such service should be rendered through the coordination of the rail service with the service of existing independent motor carriers." *C. & N. W. Ry.*, 31 M. C. C. 457, decided December 16, 1941.

The Commission went on to say that this made the case turn on the question of whether the grant to the applicant would adversely affect the operations of existing carriers. The Commission said:

> "Contrary to protestant's contention, *we are of the opinion* that the proposed service will not adversely affect the operations of existing motor carriers. Applicant merely proposes to improve an existing service through the utilization of motor vehicles in rendering a service which will be auxiliary to, supplemental of, and coordinated with the rail service. Applicant does not propose to invade territory of any other carrier. All of the points are stations on the rail line which applicant has served for years and is under obligation to continue to serve. Applicant merely proposes to improve that service in an endeavor to retain existing patrons through offering them a service more in keeping with their requirements under existing merchandising methods. *To say that such service will adversely affect the operations of existing motor carriers is to admit the superiority of the proposed service which protestants strongly deny. It may be, as protestants contend, that costs of solicitation invariably will rise and that motor carriers temporarily lose some business with the advent of a new competitor, even though its service is not superior, but, as before stated, applicant is not and will not be a new competitor. On the other hand, one competitive carrier or class of carriers has no vested right in the continuation by another of an inefficient method of operation.*" (p. 457-8). (Italics ours.)

Here again the Commission substitutes conclusions for findings and states "*we are of the opinion that the pro-*

posed service will not adversely affect the operations of existing motor carriers". That statement or its equivalent was contained in the reports in the *Seaboard* cases here under attack. In our case the Commission refused to hear evidence, refused to permit protestants to develop what the railroads proposed to do and the extent of injury to independent motor carriers. We will develop the refusal to hear evidence later, but in the meantime, the Commission's "belief" should not be taken seriously. The Commission could not possibly arrive at a legal conclusion when it refused to receive evidence and make findings.

The exclusion of relevant evidence is contrary to a legal hearing and the Commission has not complied with the statuory requirements that it find that the "operations will not unduly restrain competition".

The Commission has merely been saying elaborately, something which could have been said quite simply. All these cases mean, is that if a railroad refuses to deal with independent motor carriers, it is entitled to a certificate and, *there is no conceivable set* of facts that could persuade the Commission that the certificates should be denied.

These cases establish one point that cannot be disputed. They have not been decided on the basis of the evidence presented in each case, but rather on a firmly fixed *policy* that *independent motor carrier service will not be coordinated with rail service, by the Commission, the Transportation Policy notwithstanding.* The tell-tale sentence that explains every one of these decisions is that cited from *Pacific Trucking Company,* supra:

> "While adequate motor carrier service as such is no doubt available, we have somewhat consistently refused to compel rail carriers to make their coordinating efforts depend on competing motor carriers."

The Commissions observations about having no authority to compel the railroad to use existing service; that the motor carriers should not stand in the way of the railroad in trying to improve its service and that the railroad will receive benefits and the assumption that those benefits might filter down to the public are without legal significance. *The Commission still has the duty of deciding as a matter of law, whether the existing service could meet the claimed public need.* The Commission can coordinate transportation services by the simple method of denying certificates to carriers which refuse to coordinate services.

A variation of the general rule applied in these railroad cases comes to light in a case involving another railroad subsidiary—the Railway Express Agency. In one of its many hundred applications before the Commission, it was denied the right to extend its trucking facilities in a case decided in January, 1942. *Railway Express Agency Extension,* 31 M. C. C. 606. The Express Company wanted to add a motor carrier operation in addition to its use of a railroad between certain points in Misissippi. A number of independent motor carriers appeared in opposition. They indicated their willingness to enter into the necessary arrangements. The Commission said:

> "The determination of this question should be based on the same principles as govern the applications of independent motor carriers, that is, if adequate service exists, the applications should be denied." *Railway Express Agency, Inc. Extension—Durant-Kosciusko,* 31 M. C. C. 606, decided January 6, 1942.

The Commission, in deciding the case without reference to the protestants' service said:

> "While protestants may furnish adequate motor vehicle service, their service is confined to the transportation of freight rather than express. Nevertheless, *it is beside the point,* whether protestants could adapt their service to the transportation of express

so as to meet applicant's requirements. The point is whether applicant has made the showing of public convenience and necessity required by the Interstate Commerce Act. It is well settled that the words 'convenience' and 'necessity' are used conjunctively, and are not synonymous, but must be given a separate and distinct meaning. *Atlanta & St. A. B. Ry. Co. Application*, 71 I. C. C. 784" (p. 606). (Italics ours.)

"Here, the motor-vehicle operations proposed by applicant are designed to supplement the existing train service from and to the specified points merely for purposes of operating convenience. There is no evidence that the existing train service is incapable of adequately supplying the express transportation needed at these points. While the proposed motor vehicle operations would no doubt be a 'convenience', they have not been shown to be a 'necessity'. Bearing in mind the close affiliation between applicant and the railroad, we are of the opinion that substantial proof of 'necessity' is required in instances where, as here, motor-vehicle operations are proposed to supplement rather than to replace rail operations" (p. 606).

The important point to note is that here the Commission was unwilling to give any weight to existing motor carrier service. But at the same time it gave full weight to the rail service.

Misuse of "Public Interest" Theory

The Commission is authorized to issue certificate of convenience and necessity to common carriers upon a finding:

"that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity."[32]

The Commission is authorized to issue permits to contract carriers which do not serve the public, upon a finding:

[32] Section 207(a).

> "that the permit will be consistent with the public interest."[33]

The term "consistent with the public interest" is also found in Section 5 (old Section 213), dealing with mergers, of carriers which already hold certificates, and in Section 211, dealing with the issuance of licenses to brokers.

The Commission has issued motor carrier certificates of convenience and necessity to railroads under circumstances far short of those required to establish public convenience and necessity, and has explained its action by finding that the issuance of such certificates would be "consistent with the public interest".

Consistency with the public interest has been expressed by the Commission as follows:

> "There is no question that the proposed rail-truck coordinated service is in the public interest."[34]

In cases involving independent motor carriers the Commission has recognized the distinction between "public convenience and necessity" and "consistent with the public interest." To the contention:

> "that 'public interest is in contemplation of the Act synonymous with public convenience and necessity;' the Commission said: * * * *In our view these contentions are 'unsound.'* (Italics ours). *James A. Sproul Contract Application*, 1 M. C. C. 467.

In *St. Andrews Bay Transportation Co., Extension of Operations*, 3 M. C. C. 711, the Commission pointed out

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[33] Section 209(b).

[34] *Pacific Motor Trucking Company*, 21 M. C. C. 761;
Texas and Pacific Motor Transport Co., 30 M. C. C. 467;
Atlantic Coast Line Railroad Company Extension of Operations, 30 M. C. C. 492;
C. & N. W. Railway Company Extension of Operations, 31 M. C. C. 457;
Texas and Pacific Motor Transport Co., Extension of Operations, 33 M. C. C. 38.

that there is a vital difference between the finance (section 5) requirement and the test prescribed in the public convenience and necessity section. The Commission said that the test in the finance section had to do with the "public interest", while Section 207(a) prohibited the issuance of a certificate unless it is found that "the proposed service is or will be required by the present of future public convenience and necessity."

The Commission has, therefore, definitely recognized the difference in the tests, yet, *in all of these railroad cases*, it has considered the test of "public interest" to be the governing one and thereupon issued certificates of convenience and necessity.

Legislative History of "Convenience and Necessity"

There are sufficient references to convenience and necessity to give a clear indication of two points. First, that convenience and necessity, as used by Congress, was intended to have the same meaning as when heretofore used in state legislation and as the state acts have been construed by the Courts. And second, that convenience and necessity was prescribed with the view of putting restrictions on excess transportation facilities. Nowhere in the legislation is there any indication that certificates of convenience and necessity were to be issued in order to enable any type of transportation to merely improve its service by engaging in all other types of transportation.

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Mr. Wheeler:

"These sections require each common carrier of passengers or property to secure a certificate of public convenience and necessity. Such certificates are to be issued on a finding by the Commission that—

"The applicant is fit, willing, and able properly to perform the service proposed and to conform to the

provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity.

"This is a provision which is in practically every State law at the present time. There was some objection to it, and a suggestion was made that we should not use the word 'future' in connection with 'public convenience and necessity', and that we should not use the words 'public convenience and necessity.' But those words have been adopted by almost every State in the Union where there is a law, they have been interpreted by the courts, and the committee felt that while perhaps some other language might have been just as appropriate, nevertheless, that language having been construed by the courts, it would be unwise for the committee to write some other language in the law which would have to be passed upon by the courts." (C. R. 5880).

Mr. Harlan:

"About 15 years ago it was discovered with regard to the question of transportation that there must be some limitation placed upon the amount. So the States devised the system of certificates of necessity and convenience. It is not a new proposition by any means. It has been found by the States that requiring certificates of necessity and convenience is a very essential thing to supply in service in public transportation. We have an example here in the District of Columbia of the evil of not having that kind of control by the public, in our taxicab situation, where all the drivers are practically starving, where they do not have the facilities to keep their cabs in repair or keep them clean, and where, when we have a big convention, such as the Shrine convention, they go on strike to make up the losses that have been sustained in the past. We cannot give proper public service without some kind of control. We have had the railroads under control, and to a certain extent we have had the ships under control, but we have not made any Federal effort to control busses. The States

have all done it, but the Federal Government has done nothing, and there is no coordinated system." (C. R. 12679).

"Mr. Pierce, Yes; we did. A certificate of public necessity and convenience is simply to create a monopoly; it just means a monopoly for the fellows that hold those certificates, valuable though they are.

"Mr. Zioncheck. And the only way in which another person can come in and compete with one who has such a certificate is to come to Washington and make a showing that the person who has the certificate is not properly serving the public there, which is impossible.

"Mr. Pierce. Absolutely impossible." (C. R. 12695).

Mr. Merritt:

"But all students of the question, including the Federal Coordinator, who has been working on the matter for 2 years, are agreed that there must be coordination among these various transportation agencies, so as to produce not only the best and cheapest methods for the use of the public but also to provide for competition and rates to the end that transportation agencies may have a fair return on their investment and the users of the transportation may have low and equal rates, so that no territory and no person shall have an advantage in transportation rates over his neighbor or over neighboring territory." (C. R. 12686).

"Mr. Zioncheck. I have observed in all the argument here that you talk about the bananas upon the bunch and not about the tarantula that is hid in the bunch, which is the certificate of public convenience and necessity.

"Mr. Crawford. All right, let me answer that question. The question comes up about railroad acquisition. You put the contract common carriers in this country who operate trucks on a profitable basis by eliminating the brokers' loot and the rebate loot and I would like to see a railroad acquire those trans-

portation lines. They will be on a decent, living standard and you cannot buy them out. The way it is at the present time they are freezing them out gradually and to my certain knowledge the railroads are acquiring control of a lot of truck operators.

"Mr. Zioncheck. The gentleman has not answered my question. If there is an operator who obtains a certificate of public convenience and necessity, no matter what rates they charge, in order for anyone else to come in, they must come all the way to Washington, D. C., and make a showing before the Commission here that the public is not being adequately served or is being served at an exorbitant freight rate." (C. R. 12701).

Mr. Sadowski:

"Sections 207 and 208 relate to the issuance of certificates for common carriers, the terms and conditions, and provides that common carriers not in operation prior to June 1, 1935 must present proof of public convenience and necessity, responsibility, and so forth.

"This grandfather clause is absolutely necessary to prevent unscrupulous speculation and to protect pioneers of the industry for the public interest.

"Further, the convenience and necessity provision as it relates to common carriers only, is necessary to have a conformity with the already existing State laws, and the laws under which all common carriers are regulated, including railroads, pipe line, and so forth. We are convinced there can be no stability or progress of common carriers on the highways without the requirements of public convenience and necessity." (C. R. 12685).

Testimony of Mr. Eastman

Mr. Joseph B. Eastman, member of the Interstate Commerce and Coordinator of Transportation, appeared and testified before the Senate Committee holding hearings on S. 1629. His testimony as of February 26, 1935 on the question of convenience and necessity was as follows:

"The most important thing, I think, is the prevention of an oversupply of transportation; in other words, an oversupply which will sap and weaken the transportation system rather than strengthen it. In the case of railroads that was done in 1920 by the provision that prior to any new construction a certificate of convenience and necessity must be secured from the Commission. In my judgment it would have been much better if there had been such a provision many years before. It would have prevented certain railroad construction which tends to weaken the railroad system and situation at the present time. The States have, I think, in all cases, found the necessity in their regulation of motor transportation to provide for that prevention of an oversupply. It is a provision which has been adopted in most of the foreign countries that I have inquired into; in other words, the granting of certificates or permits in order to prevent an oversupply which weakens the situation.

"The Chairman. Of course in some of the States they have, it seems to me, abused that provision by preventing truck lines or bus lines where they come in competition with railroads. It seems to me that that is a bad thing in many cases—the prevention of competition with railroads." (p. 78).

Point 3.—Hybrid Operations.—The Commission Is Without Jurisdiction and Power To Certificate Hybrid Operations, Part Railroad and Part Motor Carrier and To Exempt Such Operations From the Tariff and Accounting Provisions of the Motor Carrier Act.

Hybrid Certificates

We have quoted enough of the law and of the legislative history thereof to make it clear that Congress recognized the motor carrier industry as a separate means of transportation.

Up to the time of the passage of the Motor Carrier Act in 1935, most of the use by railroads of motor vehicles, had to do with pick-up and delivery service in terminal areas.

It was recognized that in cities, the direct door-to-door service rendered by trucks, was desired by shippers. Railroads had experimented with that kind of service. The Motor Carrier Act, as originally passed and defining common carriers, subject to the Act, was as follows:

> "Sec. 203(14) The term 'common carrier by motor vehicle' means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of part I."

The exception referred to, in the definition, necessitated a determination by the Commission of the transportation which was subject to Part I, that is the rail section, of the Interstate Commerce Act, prior to 1935.

In *Pick-Up and Delivery Service in Official Territory,* 218 I .C. C. 441, decided October 13, 1936, the Commission determined that pick-up and delivery service within terminal areas *only,* was subject to Part I and railroads did not require certificates of convenience and necessity for that type of service. The Commission said:

> "In making this exception Congress may be presumed to have legislated with knowledge of the court decision previously mentioned, holding that pick-up and delivery service is within the meaning of 'transportation' as defined in Section 1(3) of the Interstate Commerce Act, as well as with knowledge of our own administrative findings to the effect that, while railroad terminal service by motor truck was subject to regulation under the Interstate Commerce Act, the use of motor truck by railroads in line-haul service was not subject to that act." (p. 473).

The question was a close one and there were some dissenting opinions. In 1940 Congress amended the Act and provided:

> "Sec. 202. (c) Nothwithstanding any provision of this section or of section 203, the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—
>
> "(1) to transportation by motor vehicle by a carrier by railroad, subject to part I, or by a water carrier subject to part III, or by a freight forwarder subject to part IV, incidental to transportation or service subject to such parts, *in the performance within terminal areas of transfer, collection, or delivery services;* but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad, as transportation subject to part III when performed by such water carrier, and as transportation or service subject to part IV when performed by such freight forwarder;"

By this legislation Congress designated and limited the trucking service which railroads were to engage in, as part of their railroad service and with respect to which they did not require certificates of convenience and necessity or tariffs under the Motor Carrier Act. Congress having so clearly indicated its intentions, in this regard, it follows that all other truck service, either owner or operated by railroads, falls under the Motor Carrier Act exclusively and fully. The Commission has no power or jurisdiction to create a hybrid operation outside of terminal areas. It has no jurisdiction to waive the requirements for proof of convenience and necessity nor the requirements of any other provisions of the Motor Carrier Act.

The Commission has certified the railroad to conduct motor carrier operations outside of the terminal areas,

in line-haul operations, without motor carrier tariffs, without proof of convenience and necessity, and without accounting reports and in effect has completely disregarded the Motor Carrier Act. The hybrid operations contemplated by the Act were prescribed by Sec. 202(c), and confined exclusively to terminal areas.

The Commission has no power to create a hybrid operation, part rail and part motor, outside of terminal areas.

With reference to intrastate commerce, the railroads have been very diligent in the state legislatures and in at least one instance, have succeeded in having the legislature direct the issuance of motor carrier certificates to railroads for over-the-road operations *without proof of public convenience and necessity.*

In Florida the procedure is as follows:

> "Provided, however, that upon the making of proper application therefor by any such railroad company, its receivers and/or trustees, or by any company other than a railroad company, the majority of whose stock is owned by any such railroad company, its receivers and/or trustees, *the Commission shall, as a matter of right and without a hearing, grant a certificate of public convenience and necessity to any such railroad company,* or to the receivers and/or trustees of such company, or to any such company other than a railroad company, the majority of whose stock is owned by any such railroad company, its receivers and/or trustees, to operate for the transportation of freight, express and/or United States mail over the highways and public roads of this State, using only the most practicable route located nearest to its rail lines and which is generally and/or used between the communities served by its rail lines, said route as herein defined to be determined by the Railroad Commission, motor vehicles between and within communities which are connected by and served by the rail lines of any such railroad company, but not elsewhere. The rates and charges for transportation by motor vehicles, as

in this section provided, shall be the same as those which any such railroad company, its receivers and/or trustees may be authorized to charge if such transportation had been solely by rail; * * *" (Section 27, Chapter 14764 Laws of Florida, Acts of 1931, as amended by Section 1 of Chapter 18027, Acts of 1937). (Italics supplied)

It will be seen that the State of Florida has a transportation policy for intrastate commerce which is radically different from that of Congress for interstate commerce. The Interstate Commerce Commission has undertaken to adopt the Florida policy in connection with intrastate commerce, for interstate commerce generally.

If and when motor carrier certificates are to be granted to railroads "as a matter of right and without hearing" as provided in the Florida Act, it is our point that such authority must come from Congress and that in the meantime it is the duty of the Commission to administer the law as they find it.

Monopoly—Anti-trust Laws

The only conceivable basis for any certificate to conduct motor carrier operations, and particularly hybrid operations, rests on the refusal of railroads to coordinate services with independent motor carriers.

The manner in which the Seaboard Air Line sought to establish a fictitious basis of public interest and necessity, by its refusal to cooperate with independent motor carriers is shown by the record.[35]

It has never been shown in any case that they could effect any economies or serve any public purpose by operating trucks themselves, which could not be accomplished by cooperating with independent motor carriers. This

[35] See appendix—Index to Testimony.

shows both a refusal on the part of the railroads to carry out the national transportation policy and also a determination to create a monoply in the transportation field.

These activities on the part of the railroads have received attention from the Anti-trust Division of the United States Department of Justice. On October 25, 1939 in a case entitled *United States* v. *the Association of American Railroads,* Civil Action No. 4551 in the District Court of the United States for the District of Columbia, injunction proceedings were brought against the railroad association and a large number of individual railroads, including Legh R. Powell, Jr., and Henry W. Anderson, Receivers, Seaboard Air Line Railway Company.

The complaint alleged a conspiracy, to defeat the coordination of transportation between railroads and independent motor carriers, in violation of the Sherman Act. The complaint recites the actions taken by defendants, including the receivers of the Seaboard to further the purposes of the conspiracy.

> "22. On September 20, 1935, in the City of Washington, in the District of Columbia, the defendant railroads, acting in concert with each other, through and with the aid and cooperation of the defendants, the Association of American Railroads, its officers and directors, adopted, promulgated, and issued and entered into the following resolution and agreement, pursuant to the Association's Plan of Organization:
>
> > "RESOLVED, That the Board of Directors announces the policy that no new rates should be published on loaded trucks, trailers, or truck bodies, nor should there be established any new 'all commodity' rates, or rates on containers, or rates on a per-car basis including compartment car rates, until further action by the Board. The President is directed to notify member roads accordingly.
>
> "23. In similar manner, the defendants hereto, on the same day, September 20, 1935, in the City of

Washington, in the District of Columbia, adopted, promulgated, and issued and entered into a further resolution and agreement pursuant to the Association's Plan of Organization, as follows:

"RESOLVED, That the President be directed to issue an order forbidding the establishment of joint rates as between member roads on the one hand and common carrier truck or bus companies on the other except in cases where, after consideration by the proper Traffic Executive Association where such an arrangement may be proposed or where in territory not subject to the jurisdiction of any traffic association then by the chief traffic executives of all lines interested, it is unanimously agreed that the territory involved is not served by railroad and such arrangement therefore would not constitute an invasion of another railroad's territory.

"The Board explains that the prohibition in the exception does not apply to arrangements made by a railroad between points on its own operated lines where such an arrangement is for convenience or economy, but does conclusively prohibit the invasion of a territory by another line which is already served by one or more railroads.

"The spirit of this resolution is interpreted and intended that no railroad company will issue through bills of lading with common or contract truck carriers, nor will any railroad company advance charges (except for operation in terminal districts) to either common or contract truck carriers, except, of course, where joint rates have been made under the conditions authorized in the above resolution.

"In accordance with the direction of such resolution and agreement, the defendant, John J. Pelley, President of the defendant Association, on September 27, 1935, issued an order directed to the Executives of all the defendant railroads, which was intended to and did carry out the mandate of said resolution and agreement.

"24. In similar manner, the defendants hereto, on June 25, 1937, in the City of Washington, in the District of Columbia, adopted, promulgated, and issued and entered into a further resolution and agreement pursuant to the Association's Plan of Organization, as follows:

"WHEREAS, On September 20, 1935, the Board adopted a resolution dealing with the invasion of territory of one railroad by another, through the medium of joint rates with motor carriers; and

"WHEREAS the said resolution and the interpretation thereof contained in the President's letter to Executives of Member Roads, bearing date of September 27, 1935, have been the subject of misunderstanding as to its true meaning and proper application; and

"WHEREAS it seems to be advisable that the policy intended to be announced in this resolution and interpretation should be clarified and redefined,

"THEREFORE BE IT RESOLVED, That the said resolution of September 20, 1935, and the same is hereby rescinded and in lieu thereof the following is adopted as an announcement of policy of the Association:

"It is hereby declared to be the policy of the Association that the public interest will be promoted and the integrity and credit of the Railroad Industry improved and maintained if the railroads refrain from establishing with motor carriers through routes or joint rates or fares which invade territory not served by such railroad and which is already served by one or more other railroads.

"It is further the policy of this Association that it is not desirable for the rail carriers to enter into joint billing arrangements with, or to advance charges to motor carriers, except where the services of such motor carriers are within a terminal district."

On July 18, 1941, there was entered a consent decree permanently enjoining the defendants, including the receivers of the Seaboard Air Line Railway. The decree is as follows:

"FINAL DECREE

"The United States of America filed its complaint herein on October 25, 1939. This Court has held that the rescission by the Board of Directors of defendant Association, as alleged in defendants' Motion for summary judgment and admitted by plaintiff, of the two resolutions of September 20, 1935, and the one of June 25, 1937, as set forth respectively in paragraphs 22, 23, and 24 of the complaint, did not and has not rendered this cause moot. Defendants have appeared and filed their joint Answer. The complaint has been amended as to the parties defendant by stipulation filed herein as of this day. Each of the defendants has consented to the entrance of this decree without the taking of any testimony and without findings of fact;

"And it appearing to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint herein; and it further appearing that by reason of the aforesaid consent of the parties, it is unnecessary to proceed with the trial of the cause or to take testimony therein or to make any adjudication of the facts;

"NOW THEREFORE, upon motion of complainant and upon the consent of all parties hereto and without taking any testimony or evidence, it is hereby

"ORDERED, ADJUDGED, AND DECREED:

"I. That this Court has jurisdiction of the subject matter as set forth in the complaint, and all parties hereto, with full power and authority to enter this decree.

"II. That the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled 'An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,' commonly known as the Sherman Antitrust Act.

"III. That the defendants, and each of them, and each and all of their respective agents, representatives, employees, officers, directors and members, and all persons acting or claiming to act on behalf of the defendants, or any of them, are hereby perpetually enjoined and restrained from according any force or effect to the aforesaid resolutions of the Board of Directors of defendant Association, or to any agreement, concert, or understanding, existing by virtue of, growing out of, or in any way attributable to, said resolutions, and from soliciting, encouraging, or coercing by any manner or means any of the defendants, or the officers, directors, agents, servants, or employees thereof, to abide by such resolutions, agreements, concerts or understandings, or to accord them any force or effect.

"IV. That the defendants, and other parties described in paragraph III above, be perpetually enjoined and restrained from entering into any agreement, concert or understanding with the defendant Association, its officers, directors or its membership, the effect of which is to restrain, or tend to restrain, the freedom and independence of each of the defendant railroads in accordance with its own individual managerial discretion in the matter of the establishment of through routes, joint rates, joint billing arrangements, the advancing of charges, and other mutual practices, in connection with interchange of persons and property between such defendant railroads and motor carriers.

"V. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General, or an Assistant Attorney General, and on reasonable notice, be permitted (1) access, during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendants, relating to any of the matters enjoined by this decree, (2) subject to the reasonable convenience of said defendants, and without restraint or interference from them, to interview officers or employees of said defendants, in the presence of counsel, regarding any such matters; and said defendants, on such request, shall submit such reports in respect of any such matters; and said defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

"VI. Jurisdiction of this cause is hereby retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time (upon due and reasonable notice to the adverse party or parties) for such further orders and directions as may be necessary or appropriate for the construction of or the carrying out of this decree, for the modification thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

"Dated July 18, 1941.

BOLITHA J. LAWS,

United States District Judge.

"We hereby consent to the entry of the foregoing decree:

For the United States of America:

THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General.

For the defendants:

R. V. FLETCHER,
J. CARTER FORT,
J. M. SOUBY,
GREGORY S. PRINCE."

The action of the receivers of the Seaboard in refusing to cooperate with the independent motor carriers clearly falls within the scope of the foregoing injunction proceedings. It is clear that the Seaboard has by refusal to cooperate, undertaken to establish a false and fictitious showing of convenience and necessity.

But neither the injunction proceedings on the action of the Seaboard has impressed the Commission. The final consolidated hearing on the Seaboard applications was held November 12, 1941, as shown by Exhibit "O" of the appendix to the complaint[36] and the final consent decree had been entered on July 18, 1941.

We suggest that this Court can notice the disregard on the part of the Interstate Commerce Commission of developments in these matters.

Tariffs and Accounting

We charged in our bill of complaint, that the Commission had permitted railroads to file illegal tariffs. In

[36] R. 136.

answer the Commission challenged the jurisdiction of the Court to entertain the matter.

In our bill of complaint we charged that the Commission had exempted the railroads of accounting requirements. Again, in answer, the Commission challenged the jurisdiction of the Court.

There were a number of pretrial conferences which resulted in some clarification of these issues. Plaintiffs pointed out with respect to tariff and accounting matters, they did not seek direct relief from the Court but expected to show that the Commission's action, in connection with tariff and accounting matters, was but a part of the illegal policy that the Commission was following with respect to all matters concerning truck operations by railroads. Whereupon Stipulations No. 2 on tariff, and 3 on accounting, were entered into, which stipulations are printed in the appendix to this brief.[37]

By Stipulation No. 2, dealing with tariffs, it is shown that the Seaboard Air Line Railway does not publish a motor carrier tariff and it merely publishes a directory showing the points at which it renders motor carrier service under the railroad tariff. It is also shown that railroad tariffs are made applicable to shipments moving *entirely by truck* as well as by shipments moving partly by truck and partly by railroad. By the Congressional debates, Congress made it clear that the inherent advantages of truck transportation should be recognized and that truck transportation *should not be performed under railroad rates.*[38]

As set forth in Stipulation No. 2, the alleged authority for the publication of a tariff, substituting truck service for rail service at railroad rates, was based on the report

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[37] Appendix—Stipulations. R. 190, 191.

[38] Appendix—Legislative History.

of the Commission in *Ex Parte 129*, 232 I. C. C. 683, decided July 25, 1939. By reference to that document we find:

> "Pursuant to Sections 217 and 218, we have issued regulations governing the filing and publishing of rates in connection with motor carriers, including Section 2 of Tariff Circular 20 which deals with joint rates between motor carriers and common carriers subject to Part I and Rule 31 of that circular, which provides as follows:
>
> > "'Where it is desired to establish arrangements for through transportation with motor carriers, joint rates in accordance with the provisions of Section 216(c) of Part II of the Interstate Commerce Act and of the regulations applicable to both rail-motor rates as provided in Section 2 of this circular, as amended, should be established.'
>
> "We have realized, however, that in connection with the substituted service the rail carriers and other carriers cooperating with them must have a reasonable time to bring this service into conformity with these regulations * * *."
>
> * * *
>
> "In any event, it appears that respondents have done little more than seek and obtain, from time to time, extensions of the expiration date of the special permissions, the present expiration date being December 6, 1939. Accordingly on December 16, 1937, in order to bring the matter to a head, and in view of the novel and important questions presented as to the interpretation of Part II, we instituted the present investigation into the lawfulness of these rules and the practices of respondents in connection with this service." (pp. 684, 685).
>
> * * *
>
> "There can be no doubt that the interstate transportation service here under consideration is common-carrier service and that either the rail carrier must have authority to engage in common carriage by motor vehicle in its own right, or the motor carriers joining

in such service must be authorized to act as such carriers in their individual capacities. In either event, where the substituted service consists of a combination of line-haul movements by rail and motor it is in legal effect a joint service, no matter by what other name it may be designated." (pp. 687, 688).

In concluding its report, the Commission suggested a tariff rule by which railroads could to some extent, move shipments by motor vehicle on railroad tariffs. The suggested rule and the one which the Seaboard published is as follows:

"The less-than-carload rates shall apply for all-rail service and for joint rail-motor service to the following extent: The motor service will be performed only between points on the line of the origin or destination rail carrier and is limited to service by the motor carriers listed immediately under the name of such rail carrier between points so listed and to the most practicable highway routing nearest to the line of that railroad.

"Unless otherwise directed by the shipper, the less-than-carload shipments under the rate subject hereto will be transported in such all-rail or joint motor-rail service at the option of origin or destination carrier."

• • •

"The suggestions made herein contemplate that the substituted service shall consist of joint rail-motor or joint motor-water service, that is, a combination of line-haul movements by both motor and rail or water. Thus, they are not intended to cover instances where the service is entirely by motor carrier and no actual rail service is performed or instances where the port to port service is entirely by motor vehicle and no actual water service is performed. *Where all motor service is rendered from origin to destination or from port to port, all-motor tariffs published in accordance with Part II should be filed to cover.*" (pp. 689, 690).

• • •

"In our opinion: • • •

"(2) The substitution of one form of transportation for another at the carriers option, where the shipper otherwise directs, *would constitute a breach of the contract of carriage in contravention of Section 20(11)* of Part I and Section 219 of Part II."

The Commission's order says that the substituted service under the rule laid down in *Ex Parte 129*, only applies to movements partially by rail and partially by truck and cannot be applied to movements wholly by truck. But Stipulation No. 2 shows:

"It is further stipulated and agreed that said tariffs are applicable to the substitution of motor carrier service, for rail carrier service, for shipments receiving a prior or subsequent movement by rail as well as to shipments moving entirely by motor carrier service operated by said Receivers."

It has been made clear that these independent motor carriers are subjected to competition by motor carrier operations conducted by the railroads under railroad tariffs, with respect to shipments that never touch the railroad, and in flagrant disregard of the Commission's order in *Ex Parte 129*.

In *Ex Parte129* the Commission discussed at length the provisions of law, as laid down in Part II of the Interstate Commerce Act, but having its "policy" with respect to operation of motor carriers by railroads, it disregards the statutory requirements as to tariffs, the same as it disregarded the statutory requirements with respect to convenience and necessity.

The railroads never comlied with the order and on January 24, 1941, the Commission abolished its requirement for prior or subsequent movement by rail. 28 M. C. C. 5.

But that is not all. The Commission failed and refused to apply accounting requirements to railroad owned motor carriers such as are applied to independent motor carriers. As shown by Stipulation No. 3,[39] the Commission does not require the railroad to segregate its motor carrier revenues and expenses from its railroad revenues and expenses. The Commission has provided extensive accounting requirements for independent motor carriers in accordance with the provisions of Section 220.

In any number of Interstate Commerce Commission decisions dealing with motor carrier rates, the cost of performing the service has been made the test of reasonableness. Here, these independent motor carriers are confronted with competition on traffic moving 100% by railroad owned trucks and 100% under a railroad tariff without any separation whatever of costs. The railroads have simply been put in a position where they can cut rates and cut the throats of the independent motor carriers by absorbing and obscuring their motor carrier losses in their railroad accounts.

The Commission has failed and refused to require railroad accounting which is obviously necessary in order that the Commission may perform its statutory duties with respect to the determination of the reasonableness of rates charged by motor carrier operations conducted by railroads. *How can the Commission preserve the inherent advantage of motor carrier transportation when the operations, revenues and expenses of railroad owned motor carriers are scrambled with railroad accounts?*

The disclosure of these abuses will aid the Court in understanding that the Commission has misconceived its statutory duties. The Commission has failed to apply the law in dealing with motor carrier operations conducted by railroads.

[39] Appendix—Stipulations.
R. 191.

The occasion for issuance of certificates for hybrid operations can only arise by reason of the refusal of railroads to coordinate with independent motor carriers. Refusal to coordinate being contrary to the clear policy of the Motor Carrier Act, the Commission should have found that such refusal, in and of itself, was grounds for the denial of a certificate. As shown in our discussion under Point 2, the Commission undertakes to justify its waiver of normal proof of public convenience and necessity on the narrow ground that the operations authorized are different from either rail or motor carrier service and involves the elements of each. However, this position raises the question as to where the Commission finds jurisdiction to certificate a form of transportation which Congress has not recognized.

Point 4.—Exclusion of Evidence.—By The Exclusion of Evidence The Commission Failed to Conduct a Fair and Reasonable Hearing.

In no hearing did the Commission develop any evidence of its own upon which statutory findings might be based. By the time the *Seaboard* case, reached the full Commission it had reached that point in the development of its policy where it concluded that evidence was unnecessary. It not only refused to require the railroad to produce evidence but it also refused to permit independent motor carriers to develop evidence bearing on public convenience and necessity and destructive competitive practices. The Commission had evidently concluded that no matter how weak the railroad's showing might be or how strong a showing the independent motor carriers might make, such evidence could have no influence on the application of the Commission's policy. They have determined upon a policy to give railroads certificates for the asking. The law contemplates a hearing and proof.

As far as the Commission is concerned, all of the proceedings might just as well have been *ex parte* and disposed of by the mere filing of the applications by the railroads. The Commission took the numerous applications of the Seaboard Railway, covering some 1200 miles, and set them down for numerous separate and piece-meal hearings, thereby making it impossible for any protestant to show the extent of injury which it would suffer by reason of the consolidated operations.

The Commission's policy is in conflict with the statutory mandate that it must make findings in connection with certificates of public convenience and necessity and, further, where railroads are involved, it must find that the operations will not unduly restrain competition.

The complaint set forth in detail appellants efforts to secure a fair hearing and have the Commission develop and receive evidence. Every effort of plaintiffs to have the proceedings conducted as fair, reasonable and statutory hearing was rejected by the Commission.

Beginning with the hearings before the Joint Boards and concluding with numerous petitions and exceptions filed with the Commission, plaintiffs were denied a fair and reasonable hearing. In the appendix to our complaint we set forth numerous typical rulings of the Joint Boards with respect to evidence. These rulings were identified as Exhibit "B-3."[40]

On June 11, 12, 1937, Joint Board No. 2 considered the railroad's application for motor carrier rights between Hamlet and Columbia, which application was identified as MC-86687 Sub 3. Reference to Exhibit A-3,[41] will show that the application for rights between Hamlet and Columbia is a part of an unbroken series of rights extending all the

[40]R. 37 and 288-290, 313, 314, 464-466, 483-485.

[41]R. 34.

The line from Richmond to Columbia, as shown by Exhibit "A-3" is covered by separate applications numbered Subs 2, 3, 4 and 7. These applications were filed with the Commission on the same date, February 23, 1937, as shown by Exhibit "A-2"[42] to the complaint, and in the aggregate they cover something over 400 miles.

When Joint Board No. 2 heard the Sub 3 application, covering the segement between Hamlet and Columbia, protestants sought to show the relationship between the Sub 3 application and the connecting routes covered by other applications, including Subs 2, 4, 5 and 7. The chairman of the Joint Board ruled that both the Joint Board and the protestants would have to confine the evidence to the one single sub before the Joint Board, which was Sub 3. Nothing having any connection with or relation to any other pending application would be considered. The chairman of the Joint Board frankly admitted that he did not even know the other applications were pending, although the other applications joined the segment which the Joint Board was considering. For Joint Board statement, see complaint, appendix pages 15 and 16.[43]

Of course, plaintiffs could not deal effectively with the economic issues by confining themselves to a single segment. They were affected by the combination of segments, but they were not permitted to discuss the other segments or the effect of the combination, nor even to cross-examine the railroad witnesses with respect to the other segments.

The hearing on the segment covered by Sub 3 was held on June 11 and 12, 1937, before Joint Board No. 2, and the segment between Richmond, Virginia and Henderson, North Carolina (Sub 7) was heard on June 14, 1937, by an entirely different Joint Board. At all of the hearings,

[42] R. 32.

[43] R. 39 and 313.

protestants were prevented from discussing any of the connecting segments or the relationship of the connecting segments. The railroad applicant insisted that the hearing be restricted to each separate segment and the Joint Board so ruled and the Commission, on exceptions, ignored the protests. Protestants were denied an opportunity to show the Joint Board or the Commission, what effect these combined applications would have on the independent motor carriers, or what service the independent motor carriers could render, in coordinating their operations with the various applications of the railroad. See rulings shown at pages 16 to 19 of appendix to complaint.[44]

It was as unreasonable for the Commission to hear these applications piece-meal and thereby limit protestants' inquiry and evidence, as it would be to undertake to try an anti-trust case against the Standard Oil Company by restricting the evidence to sales in one village.

The Commission cannot perform its statutory duty by shutting its eyes. The Commission must hear and consider the evidence. The Commission has not conducted a fair, reasonable and statutory hearing and it erroneously employed piece-meal hearings which denied protestants a reasonable hearing.

The objections which were made before the Joint Board were vigorously presented before the Division and before the Commission in numerous petitions and exceptions. See Exhibits "C," "D," "E," "F," and "G" of the appendix to the complaint.[45]

The Commission refused to act on the petitions for a consolidated hearing while the cases were pending and then after the record was closed it denied all of the petitions. See Exhibit "F" of the appendix to the complaint.[46]

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[44]R. 39-42 and 464-466.
[45]R. 44, 45, 48, 52.
[46]R. 52.

It will be noted, as shown in complaint Exhibit "A-2,"[47] that the first hearing was held before a Joint Board on June 11, 1937 and the last hearing, involving the 8 sub applications, which were filed February 23, 1937, was held on June 15, 1937.

The first protest against the procedure being followed was filed with the Commission on June 11, 1937, as shown by Exhibit "C,"[48] appendix to the complaint. A more formal protest and exceptions were filed on June 14, 1937, as shown by Exhibit "D," appendix to the complaint.[49] A further petition was filed January 27, 1938, Exhibit "E."[50] The Commission failed and refused to act on any of these petitions and protests until February 16, 1938, as shown by Exhibit "F," to the complaint.[51] That was long after the hearings had closed and after protestants had been forced to file exceptions to Joint Board reports and about the time that the Commission was ready to issue its report, which was done on July 11, 1939, as shown by Exhibit "L."[52]

Plaintiffs acted promptly and diligently at every stage of the proceeding to secure a fair hearing. However, the Commission failed to even rule before the hearings were closed and plaintiffs were deprived of any opportunity to introduce evidence before the Commission.

Joint Board Findings

Despite the handicaps some evidence got in. Enough of protestants' evidence got in to cause some of the Joint Boards to deny some of the applications and to find that there was enough motor carrier service available.

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[47] R. 32.
[48] R. 44.
[49] R. 45.
[50] R. 48.
[51] R. 52.
[52] R. 81.

Joint Board No. 103, which considered Subs 2, 4, 5, and 6, rendered its report on November 27, 1937, which report is set forth in full as Exhibit "K," of the appendix to the complaint.[53] The Joint Board referred to the service being offered by numerous motor carriers and their willingness to coordinate their services with the railroad. The Joint Board concluded that a railroad has no inherent right to change the means of transporting its traffic from its rail to motor vehicles. It further held that when it seeks to do so, it must assume the burden of proving public convenience and necessity. The Board further held that the railroad had no more right to invade a territory already adequately served by existing motor carriers than another motor carrier would have. The Board further found that if motor carrier service is better than rail service that the shipments should move by trucks rather than by railroad.

This Joint Board was considering applications involving about 450 miles of rights applied for, and concluded to grant rights only between Hamlet and Sanford, or a distance of 52.5 miles.

Other Joint Boards similarly denied rights which the railroad applied for. However, Division 5 of the Commission reversed the Joint Boards and granted all of the certificates applied for and did so without further hearing or further evidence. See report by Division 5 set forth in full as Exhibit "L," of the appendix to the complaint.[53]

In reviewing the Joint Board's decisions, Division 5 stated that the Joint Board had undertaken to limit the railroad, to service which is auxiliary and supplemental and that *the applicant railroad had indicated that they were unwilling to be so restricted.*[54] Protestants fear competition for traffic that does not originate or terminate on the railroad, as the Division found.[55]

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[53] R. 81.
[54] R. 102.
[55] R. 102.

The Commission Continued to Exclude Evidence

After Division 5 had reversed the Joint Boards and granted the certificates applied for and after the full Commission had *abolished the condition requiring a prior or subsequent movement by rail* and had, without evidence, inserted so-called key point restrictions, the Seaboard Air Line Railway, intervener here, petitioned the Commission for further hearing, for the purpose of removing the key point restrictions. On July 25, 1941, the Commission issued its order reopening the case for modification of the key point restrictions. See Exhibit "N" of the appendix to the complaint.[56]

At this point a startling change in procedure occurred. Throughout the hearing before the Joint Boards, the protestants had petitioned and petitioned the Commission to consolidate the hearings. After these hearings were over the Commission denied the petitions. When the railroads desired a hearing in connection with the removal of the key point restrictions, the Commission consolidated all the applications and set the matter down for hearing before an examiner. See Exhibit "O" of the appendix to the complaint,[57]

When the railroads petitioned for a further hearing the Commission recognized that the subject matter was one which only could be dealt with in the aggregate. It changed its mind about the meaning of Section 205, relating to Joint Board hearings, because it disregarded the Joint Boards and a hearing on all the applications was held exclusively before an examiner for the Interstate Commerce Commission. This was the procedure protestants had long sought. Now they would be able to put in some evidence showing that public convenience and necessity did not require the operations and that they would result in des-

[56] R. 135.
[57] R. 136.

tructive competition and in restraint of competition. But the Commission did not propose to hear any of their evidence, so, the Commission restricted the scope of the hearing and said in its order reopening the case for further hearing "solely to determine whether condition 3 as set forth in the prior report, 28 M. C. C. 5, should be modified".[58]

When plaintiffs sought to cross-examine the railroad witnesses or to introduce evidence they were informed that the hearing on the numerous applications was consolidated for the purpose of hearing evidence on the subject matters in which the railroads were interested.

Intervention of Department of Justice

Between the dates of the hearings before the Joint Boards and the consolidated hearing on petition of the railroad, the Anti-trust Division of the United States Department of Justice had observed the Commission's administrative procedure and its refusal to receive evidence. Therefore it determined to intervene in the reopened proceedings.

The protestants and the Department of Justice soon learned that this hearing was for the sole purpose of hearing the railroad. The examiner insisted on limiting the proceedings to what the railroads wished to show and closed the hearing on that basis.

Confronted with this procedure, on December 5, 1941, both the Department of Justice and the American Trucking Associations petitioned the Commission for further hearing. The petition of the Department of Justice is set forth as Exhibit "P", of the appendix to the complaint,[59] and the petition of the American Trucking Associations

[58] R. 136.
[59] R. 137.

is set forth as Exhibit "Q" of the appendix to the complaint.[60]

On January 21, 1942 the Commission denied the petitions of both the Department of Justice and the American Trucking Associations. See Exhibit "R" of the appendix to the complaint.[61]

On July 6, 1942 the Commission issued its order modifying the certificate which it had issued the railroad and removed most of the key points. See Exhibit "S" of the appendix to the complaint.[62]

On November 30, 1942 the Commission issued a certificate of convenience and necessity to the railroad without any conditions for a prior or subsequent movement by railroad and with most of the key points removed. See Exhibit "T" of the appendix to the complaint.[63]

On October 21, 1943 plaintiffs brought this suit to set the Commission's order aside.

The rulings of the examiner, at the reopened hearing, on the exclusion of evidence are summarized in Exhibit "P" filed by the United States Department of Justice[64] and in Exhibit "Q" filed by the American Trucking Associations.[65]

All of the evidence which the Joint Board refused to hear because the applications were split up for hearing was also refused by the Commission after the case had been consolidated for hearing.

At each and every stage of the proceedings there was a complete denial of a fair hearing; and failure and refusal to hear evidence upon which either the issues of

[60] R. 142.
[61] R. 151.
[62] R. 151.
[63] R. 161.
[64] R. 137.
[65] R. 142.

public convenience and necessity might be determined under Sec. 206 or the issue of restraint of competition under Sec. 205(b).

This denial of a fair hearing was recognized by Judge Paul in his dissenting opinion.[66]

Point 5.—Failure to Make Findings.—The Commission Failed To Make the Findings Required By Statute and Substituted Conclusions For Findings.

The legal questions involved in failure to make findings generally, are so elementary that we will not belabor the matter.[67]

There are involved in this case two sections of the Act which require findings on specific subjects.

Certificates of convenience and necessity are covered under Sec. 206(a) which provides that such certificate may be issued—

> "if it is found * * * that the proposed service * * * is or will be required by the present or future public convenience and necessity."

Under Point 1 we discussed the policy of the Commission and undertook to demonstrate that the Commission issues certificates pursuant to a policy, as distinguished from proof of public convenience and necessity.

Under Point 2 we discussed the Commission's waiver of proof of public convenience and necessity.

Under Point 3 we discussed the issuance of hybrid certificates for part rail and part motor operations.

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[66] R. 216.

[67] *Yonkers* v. *U. S.*, ... U. S. ....., 88 L. ed. 241.
Eastern-Central M. C. Assn. v. *U. S.*, ... U. S. ....., 88 L. ed. 431.
Florida v. *U. S.*, 282 U. S. 194, 85 L. ed. 291.
U. S. v. *Chicago M. and St. P.*, 294 U. S. 499, 79 L. ed. 1023.
U. S. v. *B. & O. R. C.*, 293 U. S. 454, 79 L. ed. 587.

Under Point 4 we discussed the exclusion of evidence.

We will not repeat those arguments but will undertake to point out where it affirmatively appears that the Commission has substituted policy and conclusions for findings.

In the first *Kansas City* case[68] the Commission said:

> "The coordinated service which the railway contemplates establishing with applicant would embrace the entire system of the railway, and each and every one of its stations." (p. 236).
>
> • • •
>
> "As has been indicated, protestants contend that if applicant be given the certificate which it seeks, they will suffer severely from the new competitive service which it will offer, not only in conjunction with the railway but on its own account. Competition is already so keen in the territory concerned that protestants can ill afford any further diversion of business." (p. 237).
>
> • • •
>
> "The railway now proposes to improve the handling of that traffic by establishing a coordinated truck-rail service in connection with applicant. As we have seen, the conclusion is warranted that there is a public need for this coordinated service, that it is a new and different character of service which neither the railroads nor the trucks alone can supply, and that it cannot be furnished effectively and well except through the use of applicant's facilities. We do not *believe* that the development of this new form of service will seriously endanger the operations of protestants, but, *in any event,* the public ought not to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers." (Emphasis supplied) (p. 237, 238).

The Court will note the absence of findings and the substitution of "belief". Then there is the further substitution of policy for findings:

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[68]10 M. C. C. 221

"* * * but, *in any event,* the public ought not to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers." (Emphasis supplied) (p. 238).

The report goes on to recite:

"In other words, there are plenty of motor carriers in this territory and it has not been shown that there is any need whatever for another motor carrier to furnish service such as the existing carriers furnish * * *". (p. 238).

The Commission found an abundance of motor carrier service but found need for a certificate for more service as a matter of policy as distinguished from proof of public convenience and necessity.

In the first *Seaboard Case*[69] the report contained the following:

"There seems little question as to the proposed rail-truck coordinated service being in the public interest, nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers." (p. 432).

It will be observed that the Commission does not make any findings whatever with respect to competition but merely recites that it does not "appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers."

May the Court be pleased, this is the identical case now before this Court. This is the identical case in which evidence has been excluded from start to finish. Having excluded the evidence the Commission naively refers to the absence of evidence.

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[69] 17 M. C. C. 413, R. 81.

Having excluded the evidence and having in its own report referred to the absence of evidence, how could the Commission possibly make the statutory findings required under Section 207 with respect to certificates and Section 5(b) with respect to restraint of competition?

In the *Pacific Motor Trucking Co.* (a railroad subsidiary) 21 M. C. C. 761, the Commission said:

> "While adequate motor-carrier service, as such, is no doubt available, we have somewhat consistently refused to compel rail carriers to make their coordinate efforts dependent on competing motor carriers." (p. 763).

It is obvious that the Commission does not make findings as contemplated by the Act but is merely substituting its policy for findings.

Then, in the second *Kansas City Southern case*,[70] the full Commission said:

> "* * * we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest." (p. 10).

Commissioner Lee, dissenting, said:

> "* * * that there are plenty of authorized motor carriers in operation throughout the territory * * * the present facilities for the movement of freight wholly by motor vehicle * * * are adequate * * * the record fails to establish that there is any need whatever for it to provide a service such as the existing motor carriers are furnishing * * *". (p. 23).

Commissioner Lee dealt with the facts but the full Commission dealt with policy.

We submit that the Commission has made no findings as such in any of these cases. The Commission has stated

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[70] 28 M. C. C. 5, R. 109.

a number of conclusions but the conclusions have little if any relationship to any factual determinations which it should make under Sections 207 and 5(b). It seems clear to us that the conclusions are related to the Commission's policy and to that alone.

It follows as a matter of course, that where evidence is excluded and certificates are issued as a matter of policy, the Commission automatically brings itself to the necessity of substituting conclusions for findings.

The Court below was in error in holding that there was evidence upon which the Commission could base its conclusions.

To the extent that some evidence "filtered" in, as the Court below stated, that was merely a modicum or scintilla of evidence. As to whether a modicum or scintilla of evidence could be sufficient to support an order of the Commission we do not argue here. We say that even if a scintilla of evidence "filtered" in, the fact that the Commission excluded the substantial evidence, made its action arbitrary and capricious. Its conclusions were not based on the evidence which a fair hearing and the statutory provisions require.

But as to the fundamental issue involved here, there was not even a scintilla of evidence to support the Commission's orders.

We have shown that when these fifteen subapplications were filed, covering some 1200 miles of operating rights, they were assigned for separate hearings before numerous separate Joint Boards. Each Joint Board limited the evidence which it would receive to that which referred to the particular segment of highway involved in the particular subapplication which the particular Joint Board was hearing. In this way all evidence relating to any operations involving all or part of two or more segments was totally excluded from each and every hearing which the Joint

Boards conducted. We do not concede that any kind of a hearing by any Joint Board could have met the statutory requirements in this case. But for the purpose of argument only, we will assume that each hearing before each Joint Board was complete for the purpose of dealing with an application for a limited section of highway. The only hearings which were ever conducted with respect to either proof of public convenience and necessity, under Sec. 207, and with respect to restraint of competition, under Sec. 205(b), were limited to such subapplications separately. That was the state of the record when Division 5 took all of the subapplications and covered them by a single report wherein the Joint Boards were reversed.[71] That single report by Division 5 contained no limitations whatever with respect to confining the operations to the separate segments. The only conditions which Division 5 imposed are shown at the conclusion of its report.[72] So, Division 5 authorized motor carrier transportation without regard for the physical limitations of the routes separately applied for and with respect to which the evidence was so rigorously limited. As to the authorized operations, extending from one subapplication to another, there was not a scintilla of evidence.

The next step by the full Commission was the removal of a condition which Division 5 had imposed, and which is known as Condition No. 3 and required a prior or subsequent movement by rail. The full Commission removed this condition as to the Seaboard in a case entitled Kansas City Southern Transport Company.[73]

Here, the full Commission substituted key point restrictions on through operations, but these key points had no relation to the territory originally applied for in the separate subapplications and through operations involving more than one sub were authorized. There had been no

[71] 17 M. C. C. 413, R. 81.
[72] R. 105.
[73] 28 M. C. C. 5, R. 109.

further hearings and of course there was not a scintilla of evidence in connection with these operations. The next step was a reopening by the full Commission, of the key point restrictions which the Commission had imposed on the Seaboard. And again, the Commission modified the key point restrictions and authorized through operations involving more than one subapplication. This was done without any evidence whatever relating to convenience and necessity under Section 207 and restraint of competition under Section 205(b), for the simple reason that the order of the Commission reopening the cases specifically limited the scope of the hearing.[74] So, we have a third order authorizing through operations, with respect to which there has never been a hearing and not a scintilla of evidence in the record, dealing with convenience and necessity or restraint of competition.

The Commission refers to "new service" and that "different service", part rail and part motor. Those expressions are repeated throughout the Commission's reports.

On brief before the Court below, the Commission said that normal standards with respect to evidence are not applicable to hybrid operations. The Commission said:

> "The complaint charges the Commission with error in its refusal to permit the protestants and intervenors to introduce evidence or require applicant to produce evidence with respect to enumerated items set out on pages 16 and 17 of the complaint. As a result of this action, it is claimed, the Commission acted without substantial evidence and was disabled from making necessary finding required by the statute.
> "The fundamental error into which plaintiffs fall is the assumption that the service proposed by the railroad is a like and competitive service to that presently rendered by the truck operators along the route sought by the railroad, and consequently applicant should have been governed by the same criteria as obtained

[74] R. 136.

where a new motor carrier seeks to invade a territory already occupied by existing motor carriers. In the latter instance questions of adequacy of existing service, the competitive effect of a new service, estimated traffic, and the ability of the communities served to support the new enterprise are pertinent issues upon which the evidence to be introduced by the plaintiff might have had bearing. But these applications did not seek to establish a new and like transportation service; they sought merely authority to establish new methods of operation to provide a service equivalent to that which the railroad was already under a duty to render."

* * *

"In applications similar to the ones here involved the Commission in *Kansas City S. Transport Co., Inc. —Common Carrier Application,* 10 M. C. C. 221, 235, said:

> '* * * Moreover, it is clear that this coördinated rail-motor service will be a new form of service, utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone.'

"Again in *Illinois Central R. Co.—Common Carrier Application,* 12 M. C. C. 485, 495, the Commission recognized as a new form the service contemplated by applications of this kind."

If the Commission is right about there being *no standards* for hybrid operations, then we are sure that there is *no law* authorizing a certificate for hybrid operations. Something must be left of the rule that the Commission exercises delegated authority only, and the rule with respect to delegation of powers.

The issue is reduced to its simplest terms. Where does the Commission get the authority to waive legal criteria, to create hybrid carriers; to make distinctions which Congress did not make?

Point 6.—Hearings - Forum.—The Commission Failed and Refused To Either Hear the Applications Itself Or To Refer Them For Hearing To A Properly Constituted Joint Board.

Plaintiffs contend that the Commission misconceived its statutory duty in assigning these railroad applications for hearing before a number of different joint boards which were not constituted according to statute.

Section 205 of the Interstate Comerce Act *requires* the Commission to assign application matters for hearing before a Joint Board where not more than three states are involved. Where more than three states are involved the Commission *may* assign the matter for hearing before a Joint Board or may hear the case itself. But that is not all. Section 205 prescribes the composition of a Joint Board and says:

> "The Joint Board to which any such matter is referred shall be *composed solely of one member from each state* within which the motor carrier or brokerage operations involved in such matter are or are proposed to be conducted." (Italics ours).

The Commission had before it at one time a series of applications for motor carrier rights involving four states, i. e., Virginia, North Carolina, South Carolina and Florida. Before these proceedings were concluded it had further applications involving a fifth state, namely Georgia, all as shown by Exhibits "A-3" and "V" of the appendix to the complaint, at pages 11a and 136, respectively.[75]

Not only did the Commission have motor carrier applications involving four or five states but the applications were filed by a railroad which operates in six states.

Clearly these applications involve more than three states and therefore it was discretionary with the Commission

[75] R. 34 and 169.

whether it referred the matter to a Joint Board or conducted the hearing itself. The Commission divided the applications and referred them to several Joint Boards instead of referring the applications to one properly constituted Joint Board. Instead of referring the applications to a Joint Board "composed solely of one member from each state" the Commission disregarded the statute and set up a series of Joint Boards. The Joint Boards which the Commission appointed were Nos. 2, 7, 103, 177 and 205, all as shown by Exhibit A-2 of the appendix to the complaint.[76] All of the Joint Boards were confined to members of the particular state or states in which the fractional application applied for was located, but disregarded through service over combinations of the subapplications.

Appellants contend that the provisions of the statute are such, that upon the Commission's election to refer the matter to a Joint Board, the applications should have been referred to just one Joint Board composed "solely of one member from each state", which would require the appointment of a member from Virginia, North Carolina, South Carolina and Florida to handle the 8 applications which were filed by the railroad on February 23, 1937, and upon the filing of additional applications in the State of Georgia, a Georgia member should have been added to the Joint Board.

In failing and refusing to appoint properly constituted Joint Boards the Commission not only deprived protestants of a fair and reasonable hearing but it deprived the Joint Boards of a fair and reasonable opportunity to even know what they were acting on. In fact, one of the Joint Boards frankly stated that until protestants brought the subject up, *they did not know that the other applications were pending.*[77]

[76] R. 32.
[77] R. 39, 40 and 314.

Legislative History

There is not much in the Congressional Record that is directly related to the composition of Joint Boards. Generally speaking, the legislative discussion ran to the proposition that the Act should provide for Joint Board procedure in order to recognize the interests of the states in these matters; and there was the further suggestion that Joint Board procedure would largely eliminate the necessity for applicants, protestants and other interested parties, making the long journey to Washington, D. C.

CONGRESSIONAL RECORD VOL. 79.

MR. WHEELER.

"The complaint which was made against this provision came to a large extent from one or two persons who complained that the present local commissions were dominated by the railroads, and said they did not feel that the local commissions should in any way have anything to say about interstate regulation.

"However, let me point this out, that wherever these bodies make recommendations, their recommendations go into effect unless someone objects, or unless the Commission itself refuses to adopt them. That is the practice where not more than three States are involved. Where more than three States are involved, then the Commission sends its own men out to hold the investigation."

* * *

"The bill contemplates submission of such matters to joint boards where the motor-carrier operation involved not more than three States and the optional use of the joint board procedure where a greater number is involved."

* * *

"MR. GERRY. May I ask the Senator why the number of States was fixed at three?"

"MR. WHEELER. It mentions three States. There could be 2 States or 3 States, according to my understanding of the bill, but if it exceeds 3 States, then

the Commission sends out its own representatives, because it is felt that if there are more than 3 States it would be difficult, perhaps, to get them together." (C. R. 5880).

The Statute Is Clear

The statutory provisions of Section 205 are clear and unambiguous. There is the provision that if more than three states are involved, the Commission may submit such matters to *a* Joint Board, and then there is a second provision that *the* Joint Board "shall be composed solely of one member from each state".

Fair Hearings Defeated

The railroad applicant split its application of February 23, 1937 into a large number of subs, which were heard by separate Joint Boards.

The practical effect of this form of filing applications is illustrated by the Commission's holding of separate hearings. The effect of this procedure was to deprive protestants of an opportunity to question the application as a whole.

The result of dividing the hearings was to obscure the collective evidence.

Throughout the hearings before the Joint Boards, there was a persistent and consistent refusal of the applicant to permit protestants to develop any information with respect to the combination of any of the applications.

When it happened that more than one application was assigned for hearing before the same Joint Board on the same date, the proceedings were kept separate.

When, upon protestants' insistence and upon orders of the Joint Board chairman some of applicant's general witnesses gave general testimony that was applicable to more

than one application, the applicant refused to allow protestants to cross-examine on the application collectively.[78]

That we are dealing with a matter of the greatest substance is shown by the refusal of the applicant to agree to any limitations on the operating authority applied for[79] and the fact that the Commission, pursuant to request of the applicant, never has restricted operations to the separate segments applied for.

On cross-examintion, Mr. W. L. Stanley, Vice President of the Seaboard Air Line Railway, explained the filing of the separate applications as follows:

> "A. No; I can explain how that happened. We have on the Seaboard Air Line Railway six operating divisions, in charge of six different superintendents. To all intents and purposes, except for the purpose of coordinating through movements, those territories represent little railroads of their own. Now, in making up these applications for truck certificates, they were studied in respect to the several divisions of the railroad—what would be most desirable on those divisions, and especially in respect to their local situations, and with no idea on earth of coordinating those several movements except where they might happen to match up with each other." R. 383.

Please note carefully what Mr. Stanley said. He said they were separate operations to the extent that they fall within the jurisdiction of separate superintendents. However, he clearly stated that being separate with respect to separate superintendents did not mean being separate with respect to through operations. He further stated that they had no idea of conducting through operations except where the applications "match up with each other". Exhibit A-3 (R. 34A) shows the extent that the applications to date do match up.

[78] R. 523-534.
[79] R. 37, 39.

It was shown by the testimony of other witnesses for the Seaboard that they had arranged through truck schedules that were faster than rail service and that would be the most economical way of handling freight. (R. 261).

That position on the part of the railroad applicant was, among other things, the reason why the protestants demanded that the hearings be consolidated, because it was obvious that the railroad intended to conduct through operations.

Later there came on for hearing the consolidation of all of the applications for the purpose of removing key point restrictions. The railroad wanted them all removed and the Commission removed most of them. The Commission prescribed certain typical key points.

According to the Commission's order of July 6, 1942, set forth in full as Exhibit "S" at page 120 of the appendix to the complaint,[80] the Seaboard may transport freight wholly by motor vehicle, that is without a prior or subsequent movement by rail, from but not including Richmond, to but not including Raleigh, a distance of about 170 miles, involving applications Sub 2 and Sub 7, which applications were heard by different Joint Boards.

The railroad may transport freight wholly by motor vehicle, without a prior or subsequent movement by rail from but not including Henderson, to but not including Hamlet, a distance of about 190 miles, involving applications Sub 2 and Sub 4, which applications were heard by the same Joint Board.

The railroad may transport freight wholly by motor vehicle, without a prior or subsequent movement by rail, from but not including Raleigh, to but not including Columbia, a distance of about 225 miles, involving applications Sub 3 and 1, which applications were heard by different Joint Boards.

[80] R. 151.

The railroad may transport freight wholly by motor vehicle, without a prior or subsequent movement by rail, from but not including Jacksonville, to Sebring; a distance of about 210 miles, involving applications Sub 9, 18, 19, 21, 22, 23, 24 and 25. All of these applications were heard by Joint Board 205 but on dates extending from 1937 to 1941.

The vice of all these proceedings lies in the fact that the Commission misconveived its statutory duty. The Commission can only exercise its administrative discretion within legal bounds.

> "It has broad powers and a wide extent of administrative discretion, with the exercise of which, upon evidence, and within its statutory limits, the Courts do not interfere. * * * But the Commission, exercising a delegated regulatory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements."[81]

Inconsistent Position of Commission

Let us see what the position of the railroads have been in matters of this kind.

When a independent motor carrier filed an application for a certificate of convenience and necessity to extend its operations and the Commission referred the application to a substandard Joint Board the railroads objected vigorously.[82] Independent motor carriers did not oppose the application but the railroads did. Two subapplications were involved, one for an extension in Kansas, which was heard by a Joint Board composed of one member from Kansas. A second application was for an extension in New Mexico and was heard by a Joint Board composed

[81] *A. T. & S. F. Ry. Co.* v. *U. S.*, 284 U. S. 248, 262; 76 L. ed. 273, 281.

[82] Herman Clary Common Carrier Application, 32 M. C. C. 5, decided January 26, 1942.

solely of a representative of New Mexico. The Commission said:

> "No motor carriers opposed the applications. Protestant rail carrier, however, submitted evidence. * * *" (p. 27).

So the only protestants were rail carriers and what position did they take?

The Commission's report shows:

> "Protestants also contended that the applications were assigned for hearing before wrong joint boards, urging that under Section 205(a) of the act they should be referred to boards composed of representatives of all the states involved, or by an examiner."

When this Joint Board point was raised by the railroads the Commission thought it had some merit.

> "As indicated earlier herein, the applications together seek to extend applicant's present operations so as to permit operations between points in Kansas and New Mexico, and between such points, on the one hand, and points in the three States previously authorized, on the other. It follows, therefore, that the operations under consideration will be conducted within five States and not merely within Kansas and New Mexico, respectively. Accordingly, as protestants contend, the two applications, which in fact cover but one operation, should have been assigned for hearing before a joint board composed of a representative of each of the five States, or before an examiner. (Citing cases) In the circumstances, however, we believe that we are warranted in proceeding to a final decision upon the records as made without reassigning the applications for further hearing. Full and complete hearings have been held, and if possible, we desire to avoid a further hearing herein, with its attendant inconvenience and expense, and at the same time to protect the rights of all interested parties. Accordingly, we shall dispose of the applications now, but shall direct that the issuance of the certificate granted herein be withheld

for 30 days after service of this report to afford any interested party an opportunity to petition for rehearing before an examiner or an appropriate joint board." (p. 8).

During all these long years, since 1937, the independent motor carriers have been trying to establish this simple proposition of statutory construction.

The Commission either refused to rule or summarily dismissed every petition filed.

Judicial History of Joint Boards

In a recent motor carrier case, decided by the United States District Court[83] the Court had occasion to refer to Joint Board proceedings. The facts were quite different from the case at bar, but the question of fraud was considered. There the applicant applied for rights in four states and the Commission assigned the matter for hearing before an examiner. During the course of the hearing, applicant abandoned its application for one state, thereby reducing the number of states involved to three. Protestants then insisted that the Commission should immediately refer the matter for hearing before a Joint Board, inasmuch as only three states were involved. The Court quoted the opinion of the Commission from 32 M. C. C. 621:

> "In the absence of any showing of any intentional deception, or fraud, an application, once lawfully referred either to an examiner or to a joint board of either three or two members, may properly be disposed of by such referee, even though during the course of the hearing applicant wholly fails to support or otherwise abandons his proposal as to one or more States, so that the number actually finally involved is less than originally appeared."

[83] *North Coast T. R. Co.* v. *U. S.*, U. S. D. C. N. D. of Calif., S. D., decided March 3, 1944.

The Court then went on to say:

> "There is no evidence of fraud or deception on the part of West Coast, and plaintiffs stated at the hearing that they made no claim of bad faith."

Plaintiffs here do allege fraud. They have continuously alleged it. The fact that the Seaboard Air Line Railway filed numerous applications on the same date instead of filing one application was in and of itself an indication of fraud. At the very first day of the first hearing, applicant refused to agree to any limitations which would limit their operations to the separate segments. Such a course of conduct is sufficient to establish fraud.

Another case is *Empire Trials, Inc.*, v. *U. S.* 53 Fed. Sup. 373. In our opinion that case may be disposed of very briefly. First, the Court points out that protestants did not raise the jurisdictional issue when they had an opportunity to do so. That is certainly not true of our case. Furthermore, Section 205(b) specifically provides that the Commission may proceed with a hearing if a joint board member or members fail to participate in a hearing. The Commission only has the duty of appointing a properly constituted joint board, and it cannot compel them to either hear or decide cases. If they fail, the Commission may proceed without their aid. In our case the Commission neither appointed proper joint boards nor conducted the hearings itself.

Commission's Argument Is Not Sound

In *Carolina Scenic Coach Lines* v. *U. S.*, 56 Fed. Supp. 801, affirmed by this Court in No. 637, Oct. Term, 1944, plaintiffs undertook to raise before the Court the issue of proper Joint Boards. However, they did not raise that issue either before the Joint Board or before the Commission.

The position of the Commission seems to be that an aggregate of substandard joint boards can be added together and constitute the equivalent of a properly constituted joint board.

If several substandard joint boards held joint hearings, and admitted and considered the evidence, the error in appointments, might become harmless. We have no such situation here, because each substandard joint board conducted separate hearings and excluded all evidence relating to any matters pending before any other joint board, although all of the applications were necessarily related and evidence relating to the composite railroad program was essential to the Commission's performance of its statutory duties.

The contention made below, that variations in the proof, or in the position of the parties, would necessitate reassignment and rehearing is founded on nonexistant "ifs." That could only be true "if" the Commission had the power to appoint substandard joint boards, in which event the enlargement of the position of the parties might quickly go beyond the jurisdiction of a substandard joint board. But the Commission does not have power to appoint a substandard joint board, so the administrative difficulty suggested rest solely upon the failure of the Commission to appoint a joint board as provided by statute.

Applying the facts in our case, we find that the first group of applications were eight in number and were filed on the same day. There was nothing on the face of these applications to indicate that they would not be joined for operation purposes. Shortly after the first group of applications were filed, other applications were filed, before any of them were set for hearing. As filed, most of the applications adjoined each other and formed continuous routes. Some of the applications, which did not adjoin other applications, adjoined operations already

conducted by the railroad under its "grandfather" clause rights.

There was something more than the bare filing of numerous separate applications which adjoined some other operation, to suggest that through operations were contemplated. The Court will observe that the main docket number of these cases is MC 86687, which covered the segment from Gaston to Garnett, South Carolina. All of the other applications were designated by the Commission as subs of the main docket number. Obviously the Commission considered the subs as being parts of something, or they would not have been designated as subs. The main docket number MC 86686 was not the original docket number of the "grandfather" rights of the Seaboard Railway, as that docket number was MC 28984, as shown at pages 59 and 76 of the appendix to the complaint.[83a] From an examination of the record of the hearing on Sub. 7, at R. 484-488, it appears that Docket MC 86687 was designated as a "new operation," and that the subs were designated as "extensions." Extensions of what? They could only be extensions of the main docket, or of the "grandfather" rights, or of each other. Any view that is taken of the matter suggests operations beyond the limits of any particuar segment and suggests extension of rights, either already held, or applied for. But, regardless of any doubts which may have existed with respect to the original intentions of the railroad, the record removed the doubt, and the latest orders of the Commission, fixing key points, did consolidate several subs.

The Commission suggested that the filing of separate applications was reasonable justification for it to conduct separate hearings, but, separate or otherwise, four or five states were involved.

There was no reason to assume that separate applications indicated separate operations. The Commission

[83a] R. 84, 102.

might have recognized the facts that separate applications have the effect of depriving protestants of an opportunity to cross examine on the entire proposal, or to present their own case with respect to the entire proposal (Subs (2) (4) (5) (6), p. 10-17).[83b] That record discloses the real position of the applicant and the vice of the separate applications.

Regardless of the fiction of motor-rail-motor, operations as distinguished from all motor operations, the undisputed facts are that the traffic to be originated and terminated on each sub would originate or terminate on every other sub. Under those circumstances, it would be immaterial whether the connecting link between truck operations be rail, or another truck operation.

If this hybrid operation, part rail and part motor, is a motor carrier for the purposes of motor carrier certificates, then it must be a motor carrier for the purpose of intergrating the routes covered by the various sub applications.

The falacy of the Commission's reasoning can be demonstrated by an illustration. There are many large railroad systems holding extensive motor carrier rights, involving thousands of miles of highway. Under the Commission's theory, if a large railroad system holding motor carrier right to ten thousand miles of highway, serving one thousand communities, in fifteen states, applies for an additional thousand miles of highway, serving an additional hundred communities, in two additional states, the Commission would hold, or did in the Seaboard cases, that only two states are involved, and that such application might be heard by a two states joint board, instead of being heard by the Commission. There is not the slightest question that, under any of the restrictions which the Commission ever imposed, or now imposes, freight could and

[83b] R. 530-535.

would originate by motor truck on any of the routes covered by the original ten thousand miles, and terminate on any of the routes covered by the additional thousand miles, or vice versa. Motor carrier service would be the means of originating and terminating traffic flowing between seventeen states. The connecting link might be rail, or it might be motor. But, regardless of the nature of the connecting line, seventeen states are involved.

Under the Commission's theory, protesting motor carriers could only inquire as to the traffic originating or terminating on the additional thousand miles sought, and are foreclosed from even referring to the fact that this same traffic will originate or terminate by motor vehicle in fifteen additional states. That is the evidence which both the joint boards and the Commission excluded in the Seaboard cases. That is the evidence which the separate hearings excluded.

The Commission erred in the appointment of substandard joint boards, and erred in depriving protestants of a fair and reasonable hearing, and erred in failing to develop the facts which were essential to a fulfillment of the Commission's statutory duties.

MISCELLANEOUS

Laches

Intervener Seaboard Air Line Railway, undertakes to spell out a case of laches, in paragraph XVI of its answer.[84]

At no time prior to November 30, 1942, when the Commission issued the certificates complained of, could plaintiffs have brought an action to set aside the order of the Commission. As disclosed by the index to the appendix to the complaint[85] and as further disclosed by Exhibit "U" of the appendix to the complaint,[86] from 1937 to 1942 there

[84] R. 188.
[85] R. 1, 2.
[86] R. 166.

was a continuing unbroken series of administrative proceedings pending before the Commission. It is elementary in proceedings of this kind, that no action may be brought to set aside an order of the Commission until administrative remedies have been exhausted.

The Commission issued the final certificate on November 30, 1942 and this suit was filed on October 21, 1943. Considering the multiplicity of proceedings and issues, as disclosed by the complaint, it is clear that plaintiffs acted with the uttermost expedition.

Interveners say that a certificate was issued on September 30, 1939 and a further certificate on April 4, 1940. But those are not the certificates being attacked here. Those certificates were issued by Division 5 and not by the full Commission. Those certificates were issued before the full Commission had decided the *Kansas City Southern* case, on January 24, 1941, reported in 28 M. C. C. 5.[87] Those certificates were modified by the full Commission. It was in the second *Kansas City Southern* case, 28 M. C. C. 5, which case included the Seaboard applications, that the Commission removed the restriction requiring a prior or subsequent movement by rail. Between 1939, when the first certificate was issued by Division 5, and 1942, when the final certificate was issued by the full Commission, the whole series of petitions and proceedings were still pending before the Commission, as disclosed by the index to the appendix and by Exhibit "U" of the appendix to the complaint.[88]

The defense of laches could not possibly be available to the intervener. Where the charge involves statutory powers, laches, if present, could not serve to breathe validity into illegal orders.

[87] R. 109.
[88] R. 166.

In each of these certificates the Commission included the following paragraph:

> "*It is ordered,* That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier."
>
> • • •
>
> "*It is further ordered,* and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of this certificate.
>
> "*And it is further ordered,* That this certificate shall supersede the certificate issued in this proceeding on September 30, 1939, and that issued under Docket No. MC-86687, Sub 10, on April 4, 1940, which are hereby canceled."

See Exhibit "T", of the appendix to the complaint,[89] for the certificate.

It is clear from the foregoing that the certificate was subject to the continuing power and jurisdiction of the Commission to modify the certificate, and, of course, no vested right as such had ever become attached.

The certificate conditions require "reasonably continuous and adequate service".

The indifference with which the Seaboard has conducted the authorized operations puts the matter of laches on them.[91] We have consistently contended that only rail-

[89] R. 161.
[91] R. 201, 202.

road convenience was involved and the railroad proved our point. What became of the public convenience and necessity which the Commission found?

The next proposition set forth, under the defense of laches, is that in the period intervening between the issuance of said certificates and the filing of this action, intervener invested "in excess of $56,000 in equipment". They failed to prove that statement and abandoned it.[90]

The next general statements by intervener have to do with alleged savings in freight cars, etc. Those are matters which should be considered by the Interstate Commerce Commission. We respectfully refer the Court to our petition of December 5, 1941, Exhibit "Q" of the appendix[92] to the complaint, wherein we requested the Commission to require the railroad to produce this information, and our petition was denied by the Commission. The railroad having failed to submit this evidence to the Commission and the Commission having refused to require the railroad to do so, it is obvious that it cannot be considered initially by the Court.

Further replying to the general allegations set up by the intervener, under the heading of laches, we invite the Court's attention to Section 210a(a) of the Interstate Commerce Act, which is as follows:

> "210a. (a) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify *but for not more than an aggregate of 180 days,*

[90] R. 201.
[92] R. 142-150.

and shall create no presumption that corresponding permanent authority will be granted thereafter. *The Second War Powers Act removed the italicized phrase until December 31, 1944. After that date it will be in effect again." (Further extended to Dec. 31, 1945.)

There is no possibility of injury either to plaintiffs or to the public by having the issues presented in this case determined with reference to legal principles. Under the War Powers the Commission has authority to grant *temporary* authority certificates without hearing and without notice to any parties.

Defenses based on laches in cases of this kind, so far as we can ascertain, have never been approved.[93]

Power to Remand

In the answer of the intervener, Seaboard Air Line Railway, Paragraph I, they deny the jurisdiction of the Court to remand matters complained of to the Commission for further proceedings in accordance with plaintiffs Prayer No. 3, as set forth in the complaint.[94]

There are many precedents for remanding cases to administrative agencies for further proceedings in accordance with the opinion and orders of the Court. In entering such orders the Courts are not in the position of substituting their judgment for that of administrative bodies charged with the duty of exercising discretion or making factual determinations.

This Court has been careful to point out that in reviewing a determination by an administrative agency the Courts do not usurp the duties and functions of the ad-

[93] *Texas & P. R. Co.* v. *Gulf & S. F. R. Co.*, 270 U. S. 266; 70 L. ed. 578. *B. & O. R. Co.* v. *U. S.*, 264, U. S. 258; 68 L. ed. 667.

[94] R. 22.

ministrative agency. *Federal Power Commission* v. *Pacific Power & L. Co.* (1939) 307 U. S. 156; 83 L. ed. 1180.

> "And so it is claimed that any action of a court in setting aside the order of the Commission would be an empty gesture, since without permission a transfer would be unlawful. But this proves too much. • • • The court has power to pass judgment upon challenged principles of law insofar as they are relevant to the disposition made by the Commission. • • • In making such a judgment the court does not intrude upon the province of the Commission, while the Constitutional requirements of 'Case' or 'Controversy' are satisfied. For the purposes of judicial finality there is no more reason for assuming that a Commission will disregard the direction of a reviewing court than that a lower court will do so."

Brotherhood of Railroad Trainmen v. *National Mediation Board* (1936) 66 App. D. C. 375; 88 Fed. (2nd) 757, was an appeal to reverse the action of the District Court in dismissing the bill of complaint. The case involved a determination by the National Mediation Board of the classes of members of the union entitled to be represented in a certain proceeding before the Board.

> "But because it is impossible to determine this question without a fuller disclosure of the facts, we express no opinion on the question and suggest it only as showing the necessity for a fuller hearing than was had.
>
> "In addition to this, it is charged in the bill that the Board declined and refused to inform appellants of the facts upon which the Board based or made its designation or rule as to who were eligible to participate in the election on the ground that this information was obtained through its examiner and should not be divulged. This, in our opinion, was wrong—for, as was said by Mr. Justice Brandeis in *United States* v. *Abilene Company*, 265 U. S. 274, 288, 'Nothing can be treated as evidence which is not introduced as such.' "

"From all of this it is obvious that the Board acted in this dispute *without affording appellants any real hearing,* and this, it is needless to say, was the sort of arbitrary action which *no court*—when its jurisdiction is invoked—*can approve.*

"In this situation, our conclusion is that the case should go back to the District Court with directions to set aside its former order and remand the case to the Board with instructions to annul its certification and to afford the contesting employees and Brotherhood a full hearing and then to reach a decision based only on evidence adduced at the hearing and supplemented by a finding of facts on which it rests its conclusion. When this has been done it may appear that the result of the election would have been the same, so that no new election will be required; but in any event the courts, if then called upon to review the matter, will have before them a record on which to determine whether the decision is arbitrary or capricious."

Answer of Interstate Commerce Commission

In Paragraph 15 the defendant, Interstate Commerce Commission, answered further and among other things said that the Commission determined the matters "in the light of its own knowledge and experience". The Courts have had occasion to consider that contention:

"Facts conceivably known to the Commission but not put in evidence, will not support an order."[94a]

"Nothing can be treated as evidence which was not introduced as such."[94b]

[94a] *B. & O. R. Co.* v. *U. S.*, 264 U. S. 258, 68 L. ed. 667.
[94b] *U. S.* v. *Abilene Co.*, 265 U. S. 274, 288.

Seaboard Opposed Applications Filed By Independent Motor Carriers

During the time and times when the Seaboard, was insisting that it could prove that public convenience and necessity required more motor carrier service (if the Seaboard were the operator), it opposed independent motor carriers when they sought to supply service to the public.

As might be expected, they contended that there was not enough traffic available in the territory to support more service. We quote from the record in Subs 9 and 10, p. 198, 199: (R. 771, 772).

"Q. (By Mr. Abeles) Mr. Stanley, frequent references have been made on cross examination of previous witnesses to the attitude of the Seaboard Air Line towards other independent motor carrier service in this territory. What have you to say on that subject?

"A. I have been an officer of the railroad and of the receivers charged with the duty of determining whether or not opposition should be made to applications of independent motor carriers to establish routes in the territory that the Seaboard serves. A great many of the independent operations in Seaboard territory, and I think I might safely say the State as a whole, are covered by certificates granted under the grandfather clause of the motor vehicle act, and I think that is true as to those operations that probably come under the grandfather clause of the Federal act, most of them. Now, when applications are filed to establish truck routes in a territory that is served by the railroad, we have usually opposed them and we have opposed them upon these grounds, that throughout this territory in Florida the density of traffic is not very great; that there is not suf-

ficient business in the territory to justify the operation of competing forms of transportation; and we have taken the position that our rail service in view of those facts is sufficiently adequate to take care of the traffic that is available in the territory. We have endeavored to show that fact, that our service is adequate when measured by the amount of traffic to be handled.

"Now, what we are seeking to do is not to establish a new and different method of transportation, but to improve a service which we believe if considered solely from the standpoint of rail transportation is adequate, by supplementing truck service to handle that business.

"Q. (By Examiner Yardley) The question, according to my understanding, is why you do not desire to interchange with truck lines.

"A. I didn't understand it that way."

The independent motor carriers testified that they were operating at 40 per cent of capacity (Sub 19, p. 185).[95]

But the full Commission granted the Seaboard the certificates which it applied for.

Classifications—Section 204(b)

The Commission, at the hearing below sought to justify its action in creating hybrid operations and exemptions therefor, by reference to Section 204(b).

That section provides:

"the Commission may from time to time establish such just and reasonable classifications of brokers or of groups of carriers included in the term 'common carrier by motor vehicle' * * * as the special nature

[95] R. 1037, 1038.

of the services performed by such carriers or brokers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this part, to be observed by the carriers or brokers so classified or grouped, as the Commission deems necessary or desirable in the public interest."

Early in the administration of the Motor Carrier Act, the Commission established a classification of carriers under that section.

Its findings and classifications are set forth in *Classification of Motor Carriers of Property*, 2 M. C. C. 703, decided August 9, 1937. That classification did not recognize or establish a class of carriers, part motor and part railroad, nor a class of carriers, owned by railroads. There are two qualifications in the section which destroy the Commission's *present* contentions. The classification, if made, must be "just and reasonable" and "consistent with the provisions of this part".

We are not aware of any decision in any railroad case, in which the Commission has relied on that section. It must be an after thought. That section relates to carriers which Congress has recognized—and not the hybrid carriers which the Commission has created.

Parker v. U. S.

No. 507—October Term 1944

In general, the issue of applicable legal criteria is presented in that case.

Other issues which are presented by our case, were not there involved.

The facts are somewhat different in the Parker and the Seaboard cases.

The Parker case did not involve splitting the application up into segments for hearing before numerous joint boards; it did not involve the failure and refusal to hear protestants' evidence; and it did not involve direct truck operation by a railroad without motor carrier tariffs and accounting.

In the Parker case, the applicant was a wholly owned subsidiary of the Pennsylvania Railroad, and the subsidiary was and is operated as a motor carrier. The subsidiary had been acquired by the Pennsylvania Railroad under Section 5 proceedings. Furthermore, the subsidiary was an original "grandfather clause" motor carrier under Section 206 of the Motor Carrier Act (21 M. C. C. 405).

The subsidiary sought to extend its line in order to serve its railroad owners, in additional territory, and thereby arose the issue of public convenience and necessity.

In the Parker case, the Department of Justice was confronted with the contentions of both the Commission and the plaintiff. It did not adopt, without qualifications, the position of either side.

As we understand the position of the Department of Justice, in the Seaboard cases, they support the plaintiffs, because they were denied a fair hearing; because the applicants position tends toward monopoly and because protestants do not seek a monopoly. We have not asserted that the Commission may not grant additional operating authority, if required by public convenience and necessity, upon the exercise of discretion within the statutory standards, recognized and applied, but, on the contrary, we contend that the Commission, in our case has disregarded legal criteria, and also failed and refused to conduct a fair and reasonable hearing.

We have not said that appellants cannot be subjected to more competition simply because they were there first,

and, *ipso facto,* no more competition shall be permitted. We say that proper procedure, with due regard for legal criteria must be observed. We have not placed an arbitrary administrative ceiling on public convenience and necessity for motor service. We contend that there is no statutory authority for the issuance of motor carrier certificates of convenience and necessity, based solely on railroad convenience.

In the Parker case, as we understand it, the Department was in some doubt as to how far plaintiff's position went as to monopoly. Being in doubt, it was not prepared to risk other issues, involving public policy, even though it may have recognized errors on the part of the Commission. In our case, the errors of the Commission were too great.

Reference To The Commission

(Commented on by the Court below)

The introductory comments in plaintiffs brief before the court below, were specifically designated as part of the record to be certified and likewise the comments before the court, below on argument were designated.

"We believe that the Commission has grossly exceeded statutory bounds and disregarded the will of Congress.

"We undertake the burden of proving our case along these lines.

"Before proceeding further, we disclaim any intention or purpose to charge any person connected with either the Interstate Commerce Commission or the intervenor, Seaboard Air Line Railway, with any improper personal conduct. We have the greatest respect for all parties concerned and involved. The use of such sharp and pointed terms as 'arbitrary and capricious,' railroad mindedness,' 'fraud,' and 'wilful' is confined to their legal concept.

"Within those sincere expressions of personal esteem, we present our argument." (R. 230, 231).

The following is a quotation from the transcript of argument before the District Court:

"Judge Dobie: I will say one thing for your brief; you will never be accused of handling the Interstate Commerce Commission with gloves.

"Mr. Beall: I have great respect for the Interstate Commerce Commission. As a commission I think it is one of the best the country has ever had as individuals. As a Commission I think they go wrong like everybody else does.

"Judge Dobie: 'Even the worthy Homer sometimes nods.'" (R. 1230).

CONCLUSION

Law

There are no provisions in the Interstate Commerce Act under which the Commission can authorize railroads, *as such*, to operate trucks under any circumstances whatever.

When Congress wanted railroads, *as such*, to operate trucks, it specified the circumstances, conditions and territory, in the Act, and left nothing for administrative determination by the Commission. (Sec. 202(c)(1)(2).) The discretion of the Commission is limited, under Sec. 207, to certificating motor carrier operations.

Congress defined the persons to whom certificates may be granted and limited such grants accordingly (Sec. 203 (a)(5)).

Only motor carriers may receive certificates.

Congress did not foreclose railroads from becoming the owners of motor carrier operations.

As a certificate may be issued only to a motor carrier, it follows that a railroad must, for the purposes of the proposed operations, assume the status of a motor carrier.

But a railroad as such, can never receive a certificate.

A railroad can never conduct railroad operations under a motor carrier certificate.

Nor can the Commission create and certificate a hybrid operation, part rail and part motor.

The Commission must administer and enforce all of the provisions of the Act and it may not waive or suspend any of them (Sec. 204(a)(6)).

Having assumed the status of a motor carrier it follows that all provisions of the Act are applicable.

It is in the light of these statutory requirements that the Commission's administrative actions are to be reviewed.

What does the Commission do when railroads apply for certificates?

1. It receives the application from the railroad, as such.

2. It conducts a hearing for the railroad, as such.

3. It considers railroad evidence, as such.

4. It views the prospective improvements in railroad service, as such.

5. It considers prospective railroad economies, as such.

Then it issues a certificate to the railroad, as such, to operate trucks.

It waives or sets aside the tariff provisions of the Motor Carrier Act and authorize the railroads to operate trucks under railroad tariffs.

It waives or sets aside the accounting provisions of the Motor Carrier Act and authorizes railroads, as such, to intermingle the truck revenues and expenses with the railroad revenues and expenses.

Those are the simple and undisputed facts with respect to the handling of these applications.

Those facts measured against the statutory provisions, in and of themselves show that the Commission has misconceived its jurisdiction and power.

Policy

In the course of the Commission's handling of railroad applications for certificates, the Commission refuses to consider every inquiry which normally arises in connection with motor carrier applications for motor carrier certificates.

The adequacy of existing motor carrier service is disregarded.

In fact, its existence is ignored by both the Commission and the railroad applicants.

When protestants are able to get that information into the record, the Commission generally concedes that an abundance of motor carrier service is available.

The willingness and ability of existing motor carrier to coordinate their service with the railroads are disregarded by both the railroads and the Commission.

The railroads state and the Commission finds, that railroads will not cooperate with independent motor cariers and for that reason *alone* the Commission issues certificates which the railroads apply for.

We do not question the fact that the Commission has broad powers to make determinations with respect to public convenience and necessity, but we do say that the broader

the power, the greater the necessity for the observance of statutory standards.

In railroad application cases the Commission has never conducted an investigation to determine the adequacy of existing motor carrier service.

The Commission has never conducted an investigation to determine whether any or all of the improvements to railroad service, and economies in railroad operations could be accomplished by cooperation with independent motor carriers.

The Commission has never conducted an investigation to determine whether the operations proposed by the railroads would result in destructive competition or restraint of competition.

When motor carriers contended that they could cooperate with the railroads and effect all of the improvements in service and economies which the railroads deemed desirable, the Commission dismissed their contentions with the observation that the railroads refused to deal wtih independent motor carriers.

In this case (Seaboard applications) the Commission failed and refused to accord protestants a hearing wherein they might show the destructive competitive practices and restraints of competition which would result from the granting of the applications.

The Commission dismissed these contentions with the bare and unsupported statement that it did not believe that protestants would be injured.

The procedure followed and the conclusions reached by the Commission can only be explained on the basis of the policy which the Commission has adopted.

Before the enactment of the Motor Carrier Act, the Commission made investigations and reports dealing with

the benefits which would accrue to railroads if they operated trucks to supplement their rail service.

The Commission found that if railroads operated trucks they could give their railroad patrons better railroad service.

The Commission found that if railroads operated trucks in connection with their railroad service they could effect many economies in railroad operations.

It is upon these findings and conclusions that the Commission adopts the policy of encouraging railroads to operate trucks.

The findings and conclusions of the Commission, made prior to the enactment of the Motor Carrier Act, have no application here. The national transportation policy directs the Commission to administer all of the provisions of the Act, with the view of carrying out a policy which the Commission did not have before it, when it made its prior investigations and reports.

Our contention is, that upon the passage of the Motor Carrier Act, a railroad *as such*, cannot be granted a certificate under the Motor Carrier Act, to conduct railroad operations under the Railroad Act.

Prior to the Motor Carrier Act the railroads could and many railroads did, inaugurate truck service in both terminal service and line-haul movements; and this was done without the necessity for certificates of any kind.

This Court had occasion to consider such line-haul truck operations on behalf of railroads in the *Thompson* case.[97]

That case did not involve public convenience and necessity, because the rights arose under the "grandfather" clause of the Motor Carrier Act.

That case discussed shipments by truck under railroad tariffs and bills of lading, but those discussions were mere-

[97] *Thompson* v. *U. S.*, ... U. S. ....., 88 L. ed. 326.

ly descriptive of what the railroad had done prior to the passage of the Motor Carrier Act.

Nothing in that case lends even color, to the contention that after the passage of the Motor Carrier Act, the railroad could operate a Motor Carrier Act certificate as a railroad and under railroad tariffs and accounting.

All this Court did in that case was to hold that by virtue of the "grandfather" clause the railroad became the possessor of a motor carrier certificate by virtue of the "grandfather" clause.

This Court left untouched the question as to whether the motor carrier certificate was to be operated by a railroad *as such* under the Railroad Act or was to be operated as a motor carrier under the Motor Carrier Act.

Legislative History

In the original Motor Carrier Act of 1935 (Sec. 203(a)(14)) Congress exempted from that Act such truck operations by railroads as were subject to the rail section of the Interstate Commerce Act.

Congress provided that all other truck operations by railroads, should be regulated as motor carrier operations.

Congress did not define the operations which were deemed to be subject to the Rail Act.

The Commission had repeatedly held both before and after the passage of the Motor Carrier Act that it had jurisdiction over pick-up and delivery service by railroads within terminal areas.[96]

In 1940, Congress amended the Motor Carrier Act by rewriting Sec. 203(a(14) (definition of common carrier by motor vehicle) and by adding Secs. 202(c)(1) and (2) (exempting-pickup and delivery service in terminal areas).

[96] Pick-Up and Delivery, 218 I. C. C. 441.

By adding Sec. 202(c)(1) and (2), Congress gave statutory recognition to the administrative rulings of the Commission, asserting jurisdiction over pick-up and delivery service and made that service subject to Part I.

Having stated under new Secs. 202(c)(1) and (2), the truck operations which were to be subject to the Rail Act and having exhausted the exemptions contemplated, Congress struck from Sec. 203(a)(14) all reference to truck operations by railroads.

Congress left in Sec. 203(a)(14) a reference to the Railway Express Agency and continued an exemption for such portions of its truck operations as were subject to Part I.

It should be noted that Sec. 203(a)(14) as originally written in 1935, exempted truck operations by railroad and express companies subject to Part I, without specifying how or when they became subject to Part I.

When Congress amended the Act of 1940 and eliminated all reference to railroads from Sec. 203(a)(14) but left express companies in, it further provided that the exemption applied to truck operations which have "heretofore been subject to Part I".

By inserting the provision "heretofore" Congress evidenced an intention to take from the Commission all jurisdiction to enlarge the exemptions by future administrative rulings.

We contend that by rewriting Sec. 203(a)(14) and adding Sec. 202(c)(1) and (2), in 1940, Congress merely made clear what it had intended, in 1935.

We contend that this legislative record supports our position, that the only truck operations which a railroad may conduct *as such* are those covered by Sec. 202(c)(1) and (2), and that all other motor carrier operations must

be conducted wholly within the provisions of the Motor Carrier Act.

Since 1940 the Commission has continued to grant certificates to railroads, upon applications under Sec. 207 of the Motor Carrier Act, and have also continued to exempt those operations from the tariff and accounting provisions of the Motor Carrier Act.

By so doing, the Commission has created a hybrid operation for which there is no statutory authority.

Theory of Hybrid Operations

The Commission calls these hybrid operations, part rail and part motor, a new kind of service.

Having called it a new kind of service the Commission proceeds to issue certificates under new kinds of proof of public convenience and necessity.

Having called it a new kind of service, unlike either rail service or motor carrier service, the Commission proceeds to issue a certificate under the Motor Carrier Act, and to prescribe tariff and accounting regulations under the Rail Act.

That the service is different from either rail or motor operations we do not dispute, but where does the Commission find statutory authority to recognize a new type of service which Congress has not recognized?

Where does the Commission find statutory authority to fashion a code of regulations by borrowing from both the Motor Carrier Act and the Rail Act?

The reports of the Commission make it clear, that it has issued the certificates on a showing of railroad convenience, railroad economies and improvements to railroad service.

The Commission concedes that it has not required a showing of public convenience and necessity for motor carrier operations under the Motor Carrier Act, such as is required of indepedent motor carriers.

The legislative history of certificates of convenience and necessity, under both the Rail and Motor Carrier Acts, show that the purpose of such certificates has been to prevent excess transportation, the cost of which must be borne by the public.

Numerous decisions by this Court have approved that principle.

Under the theory of a new type of service, the Commission has thrown to the winds all of the normal criteria for determining public convenience and necessity.

In the same reports it finds an abundance of motor carrier service but authorizes more.

Taking a pragmatic view of the situation, we pose the inquiry—How much additional transportation does this new type of service lead to?

There are 250,000 miles of railroads in the United States Under the railroad program, and under the Commission's policy every mile may be duplicated by a railroad operated truck line.

Between many important places there are from 2 to 5 paralleling railroads.

Under the railroad program and the Commission's policy, each railroad will be entitled to inaugurate its own truck service.

In addition to the 250,000 miles of railroad, there are approximately the same number of miles of operations by the railroad owned Railway Express Agency.

Under the Express Agency program and the Commission's policy, every mile of Express Agency operations

may be paralleled by truck operations conducted by the Express Agency.

In the face of this pyramiding of transportation service, the Commission, without making an investigation, merely observes that it does not believe that independent motor carriers will be injured by the new service.

The appendix hereto contains a partial list of reports authorizing truck operations by railroads.

No attempt has been made to list the several hundred reports granting rights to the Railway Express Agency.

Inherent Advantages

The Commission points out that truck operations have certain inherent advantages over rail operations.

For that reason the Commission finds that as to some services, railroads offer an inferior service.

Then the Commission concludes that Congress never intended that any type of transportation had a right to insist, that any other type of transportation must be limited to an inferior service.

Upon that premise the Commission grants certificates to railroads to operate trucks.

Every type of transportation has some inherent advantage over every other type of transportation.

Under the Commission's theory, every type of transportation would be authorized to inaugurate some services which are conducted by every other type of transportation.

Every transportation system would be duplicated to some extent, by every other type of transportation.

The Commission may feel that the railroads are the only ones entitled to operate motor carriers, water car-

riers, air lines, and express companies, but Congress has not taken that view.

The legislative history of transportation acts disclose that Congress had laid down a policy which is clearly at variance with that which is being fostered by the Commission.

The national transportation policy and the separate parts of the Interstate Commerce Act, together with other acts, recognize the separate types of transportation.

It certainly was not the intent of Congress that each of these types should invade the field of every other type.

Neither can it be said that Congress intended that any transportation agency should be permitted to obtain monopolistic control of other agencies.

Congress, long ago, put restrictions on the railroad ownership and operation of boats.

It did that in the Panama Canal Act.

Subsequently Congress put restrictions on railroad control of barge lines.

Separate administrative bodies were created for the regulation of air lines and foreign commerce by boat lines.

There is nothing to be found in the acts of Congress which lends any support to an integrated transportation monopoly.

The Commission cannot circumvent the will of Congress by creating new types of service, part one type of carrier and part another type of carrier, and borrow from the various regulatory provisions, and fashion a code of regulations to cover its creation.

The policy of the Commission caused the Department of Justice to intervene in the proceeding before the Commission, and cause it to answer this suit and confess error

and pray judgment for the defendants below, appellants here.

Comments By The Commission

In the reports of the Commission and in the briefs before this Court, there are a number of comments which have a tendency to minimize the importance and significance of what the Commission has done.

The Commission comments that the railroads will use the certificates to handle less-carload shipments by truck.

There are no provisions in the certificates which limit the shipments to less-carload traffic.

The railroad applicants stated on the record that they proposed to handle both carload and less-carload traffic.

The Commission refers to service which is "auxiliary to or supplemental of rail service".

At one time the Commission defined such service as involving shipments having a prior or subsequent movement by rail, but later abolished that test.

The Commission assures this Court that it limits the service to points served by the railroad.

But what important points are not served by railroads?

To the contention that the Commission limits this new service to that which is auxiliary or supplemental to rail service, the recorded facts supply the answer. The Commission has authorized railroads to abandon lines and to inaugurate motor carrier service between points formerly covered by the abandoned lines. This has done so in the face of service already being rendered by 50 truck lines between the terminal cities and including all intermdiate stations.[98]

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[98] Indiana R. Receiver—Abandonment, 240 I. C. C. 359.
Indiana R. Co.—extension 27 M. C. C. 176.

The Commission says that "key point" restrictions have the effect of limiting the service to that which is "auxiliary or supplemental". Key points are a new name for railroad terminals.

The certificates authorize the handling of traffic which never moves by railroad and it is difficult to see wherein such transportation is auxiliary or supplemental.

The key points may be hundreds of miles apart and are designated by the railroad and changed from time to time.

The Commission never made an investigation of its own to determine appropriate key points—railroads determine key points.

The Commission lays great stress on the conditions which it imposes.

The Commission assigned these applications for hearing while it still construed "auxiliary" or "supplemental," as requiring a prior or subsequent movement by rail, and the hearings were conducted on that basis.

Subsequently and without a hearing, the Commission abolished the prior or subsequent movement by rail condition.

Then the Commission without a hearing, provided some key point restrictions.

The railroads being dissatisfied with the key point restrictions which the Commission had suggested without a hearing, the Commission set all of the applications down for further hearing, with respect to the railroad's desires as to key points.

When the Commission issued its order setting the matter down for further hearing, it wrote into the order a provision limiting the hearing to the key point questions.

At the hearing the examiner ruled that this limitation in the order foreclosed protestants from developing any

matters having to do with public convenience and necessity. The Commission sustained the examiner.

The hearings were held on the theory that the separate applications would be operated as separate segments or routes and under a prior or subsequent movements by rail restriction.

But subsequently and without further hearings the Commission issued certificates for consolidated operations and abolished the conditions under which the hearings were held.

Appellants say that they were and are entitled to be heard regardless of whether the conditions which the Commission imposes or removes from time to time, are good, bad or indifferent, or benevolent.

The Commission has refused to hear them and for that reason, among others, we contend that such conditions as the Commission may or may not write into the railroad certificates, from time to time, are entirely beside the point insofar as the legal issues before this Court are concerned.

The Court will recognize the terms "auxiliary and supplemental" as having no precise definitions.

Congress did not use these terms but used the term "incidental" (Sec. 202(c)(1)) and limited its application to services within terminal areas.

We submit that Congress has not delegated to the Commission authority to write into the Act the terms "auxiliary and supplemental", apply them to line-haul operation, and change their meaning from time to time, without hearing.

The Commission lays great stress on what it contends are safeguards to protect the independent trucking industry.

As late as December 23, 1943[99], in discussing "auxiliary and supplemental" service, the Commission said:

> "Although, at times, a condition formerly was sometimes included in acquisition cases to the effect that service to be rendered should be 'auxiliary and supplementary' to the railroad's service, there has been no indication in the reports that such condition was intended to prohibit rendition of all motor-carrier service directly for the shipping public under the operating rights in *addition to*, in *substitution for*, and in *lieu of*, the parent railroad's service, or to restrict the operation solely to one in combination with the railroad's operation; nor is it our understanding that it has been so construed by the carriers. In other words, evidence upon which affirmative action has often been based, and the finding made that the resulting service would be auxiliary and supplementary to that of the railroad, has been based upon a motor-carrier operation in *addition to*, in *substitution for*, and in *lieu of*, the railroad's operation, as well as upon an operation *in combination* with the railroad."

The Commission has generally refused railroads authority to conduct operations into territories served by other railroads[100].

But the Commission fixes truck rates for the competing service which is "auxiliary or supplemental" and no longer restricts railroads to serving points which are served by the applicant railroad.

The most that the Commission does is to restrict railroads to the general territory served by the railroad.[101]

As late as February 14, 1945[102] a proposed report contained the following:

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[99] Sou. Pacific Co.—Control—Valley Motor Lines, 39 M. C. C. 441.

[100] Pa. Truck Lines—Control—Barker, 5 M. C. C. 11.

[101] Utah Idaho Central R. Co.—Control—Messinger, 39 M. C. C. 25 and cases cited at page 28.

[102] Frisco Transportation Co.—Control—Mo. Ark. Transportation Co., Docket MC-F 2529.

"assuming that railraods may acquire motor carrier properties within their own territories, such properties would become parts of the railroads' general operations and, as the word 'service' usually embraces the entire product of their business, there is grave doubt whether vendee would be performing any 'service by motor vehicle' whatever if it should be restricted to the mere use of motor trucks in lieu of freight cars in handling the railroad's freight only, at railroad billing and rates.

"Railroads could hardly be expected to resort to Section 5 proceedings for the purpose of acquiring such restricted rights, and if Congress desired to exclude them from performing a 'service by motor vehicle', it certainly would have used clear and definite language not now contained in Section 5 or in the national transportation policy (enunciated by Congress) to accomplish that result."

These quotations and citations destroy the arguments here made, by the Commission, to the effect that it limits railroad service to that which is "auxiliary or supplemental", or in any manner protects the independent motor carrier industry.

The Commission has authorized railroads to operate trucks and transport commodities with respect to which no railroad service is performed.

It has authorized the railroads to originate or terminate shipments by truck which move to and from every point on the Seaboard railroad in, six states.

Under the Seaboard's through routes and joint rates with other railroads, it may originate or terminate shipments by truck to and from every point in the United States.

All of this transportation may be performed under railroad rates, tariffs and bills of lading and accounting.

The Commission has authorized a system of through routes between railroad's truck operations and its rail operations, and with every other railroad in the United States.

The Commission has enabled the Seaboard Railway to do with its own truck operations, what the railroad refused to do in cooperation with independent truck lines.

In conducting these operations under railroad tariffs, the inherent advantages of the two types of transportation are totally disregarded.

The railroad may handle traffic by truck under railroad quantities and railroad costs, without separate accounting.

But the Commission fixes truck rates fo rthe competing independent motor carriers on the basis of truck costs and quantities.

This Court had occasion to consider this discriminatory policy of the Commission in the *Eastern-Central* case.[103]

Instead of perscribing conditions to protect the independent trucking industry, as the Commission's reports and briefs would suggest, it has discriminated against independent motor carriers and enabled railroads to engage in the most destructive of competitive practices.

Some divisions of the Commission have, on occasion, recognized the necessity for keeping separate the rail and motor accounts.[104] The Commission said:

> "At the hearing, counsel stated that the railroad has no objection to merger of the properties of Messinger with its own. However, we perceive little advantage to be gained from such a merger, and, on the contrary, the physical merger of the motor-carrier with railroad operations often results in accounting and record-keep-

[103] *Eastern-Central Motor Carriers Assn.* v. *U. S.*, ... U. S. ....., 88 L. ed. 431.

[104] The Utah Idaho Central Railroad Corp.—Control—Messinger Truck Line, Inc., 39 M. C. C. 25.

ing difficulties as well as complications in complying with the respective requirements of parts I and II of the act, which matters can be simplified by keeping the two types of operation separate. Our findings accordingly will authorize acquisition of control of Messinger as a separate operating entity."

Coordination

By separate parts of the Interstate Commerce Act, Congress has regulated the separate transportation agencies.

The national transportation policy, laid down the rule under which these sections were to be administered.

This Court had occasion to consider the national transportation policy in the recent *Seatrain* case,[105] decided January 29, 1945.

The Commission has never conducted an investigation to determine what improvements in railroad service and what economies in railroad operations, might result from cooperation with the independent truck lines.

That such cooperation is practical has been demonstrated over a long period of years.

The Commission's reports are replete with recitals of such arrangements,[106] and this Court has had occasion to discuss those arrangements.[107]

The railroad tariffs show that such arrangements have in effect with hundreds of independent motor carriers.[108]

The Assocoation of American Railroads passed a resolution forbidding its members from entering into joint rates with independent motor carriers.

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[105] *U. S.* v. *Pennsylvania Railroad Co.*, ... U. S. .....; 89 L. ed. 428.

[106] Missouri Pacific R. R. Co., application, 22 M. C. C. 321.
Chicago and N. W. R. Co., application, 31 M. C. C. 299.
Chicago M. & St. P. & P. R. R. Co., application, 41 M. C. C. 689.

[107] *Thompson* v. *U. S.*, ... U. S. ....., 88 L. ed. 326.

[108] National Substituted Freight Service Directory No. 1D I. C. C. A 3503, I. C. C. A 150—Agent L. E. Kipp and supplements thereto.

The Department of Justice proceeded against them under the Anti-trust laws and a permanent injunction was entered against the association and its members, including the Seaboard Airline Railway.

The railroads now tell the Commission that they want their own operating authority.

They assign as reasons "single responsibility to shippers"; "disclosure of shipper information"; "short-hauling themselves"; "arrangement with numerous motor carriers", etc.

There are about a thousand railroads in the United States but long ago Congress required them to establish through routes and joint rates between themselves and with water carriers.

It has not been shown that there is any difference between cooperation with independent motor carriers, subject to Interstate Commerce Commission regulation, and cooperation between railroads and water carriers, and those arguments were exhausted long ago.

One further argument remains and that is that the Commission is said not to have any power to require through routes and joint rates between rail lines and motor carriers.

But railroads have made hundreds of joint arrangements with independent motor carriers, and they make joint rates with railroad controlled motor carriers.

The issue therefore does not concern the Commission's power to require joint rates but concerns the Commission's power to prevent discriminations. It concerns the Commission's power and duty to refuse certificates to those who refuse to abide by the national transportation policy.

The Act is not silent on the matter of joint rates, as Sec. 216(c) specifically authorizes joint rates and Sec.

216(e) specifically gives the Commission jurisdiction to prescribe divisions of joint rates.

A careful analysis of the Commission's reports in these cases leads to but one conclusion, that certificates are granted to the railroads as such, because they refuse to cooperate with independent motor carriers.

In adopting this position the Commission is not only ignoring the national transportation policy but it is aiding the railroads in circumventing the Anti-trust laws.

It is difficult to understand how the railroads could hope to establish a fictitious showing of public convenience and necessity by the simple expedient of refusal to cooperate with independent carriers.

Why an expert body like the Interstate Commerce Commission should accept failure to cooperate, as proof of public convenience and necessity, is simply beyond comprehension.

Congress did not close the door to railroad operation of motor carriers but simply provided that when they do operate motor carriers, they should abide by the same regulations that independent motor carriers are required to observe.

Our contention is that railroads must meet the same proof of public convenience and necessity when they wish to inaugurate a motor carrier operation as any other motor carrier must meet.

They must conduct motor carrier operations under motor carrier tariffs and keep motor carrier accounts of their motor carrier operations.

The Commission has never made an investigation of the possibilities of coordination with independent motor carriers.

It accepted the railroad's declaration that they refused to cooperate, as disposing of all of the issues.

The Commission has never conducted an investigation to determine whether cooperation by the railroads and motor carriers, involve problems any different from those presented by cooperation between railroads and between railroads and water carriers.

The Commission has never made an investigation to determine what motor carriers are in a position to give system-wide cooperation with railroad systems.

Many motor carrier operations cover as much territory and frequently more, than most railroads.

There is a great inconsistentcy between the railroad's contention that they only desire to use trucks for short-hauls and their contention that they would be forced to deal with numerous motor carriers. If that problem arose at all, it could only arise in connection with long hauls.

Examination of the Commission's reports discloses that generally there are from one to fifty motor carriers operating over the routes which the railroads propose to operate.

We have contended that the Commission issued certificates on the basis of its policy and not on proof of public convenience and necessity.

If Congress intended that operating authority be granted on the basis of policy, there is no need for the Commission conducting a series of proceedings which are in effect ex parte.

Congress could have put a suitable provision in the law to cover that situation, the same as it did with respect to pick-up and delivery service in terminal areas.

But Congress provided for the issuance of certificates upon proof of public convenience and necessity, and re-

quired the Commission to conduct hearings and to make such findings.

Obviously such procedure involves hearings and the consideration of evidence.

Now we come to the simple question,—are there any conceivable motor carrier circumstances under which a railroad application might be denied?

An examination of the Commission's report and its reasoning discloses the answer and it is - no.

Findings Required

Sec. 207(a) requires an applicant to prove that public convenience and necessity requires the proposed service and the Commission must so find.

When a railroad purchases a motor carrier the Commission must find under Sec. 5(h), that the acquisition will not restrain competition.

The national transportation policy refers to unfair and destructive competition.

There is nothing in the certificate section (Sec. 207(a)) which refers to restraint of competition, however no joint arrangements may be made under Sec. 207(a) without approval under Sec. 5(1).

In a sense, the Commission has recognized that Congress did not close the back door against destructive competition by Sec. 5(b) and leave the front door open in Sec. 207.

most, if not all, of its reports the Commission has said (not found) that it does not believe that independent motor carriers will be injured.

The Commission has never conducted an investigation to determine what the facts might be.

The Commission has never determined or estimated the amount of traffic that might be diverted or the amount of revenue which might be lost to independent motor carriers.

The mere expression of belief in an evidentiary vacuum does not meet the statutory requirements for findings.

In this case, the procedure followed by the Commission foreclosed the development of evidence which would have disclosed the facts.

Hearings

As disclosed by the record and the opinion below appellant protested that they had been denied a fair and reasonable hearing from the beginning of these proceedings.

Initially, the gist of the complaint lay in the fact that the railroad split its routes up into a number of segments, filed separate applications for each segment and the Commission conducted separate hearings by joint boards on each segment.

This resulted in protestants being unable to show the manner in which they would be harmed, by the aggregate of routes or segments applied for and neither could they show the manner in which they would be able to coordinate their services with the railroad.

Upon it being disclosed that the railroad proposed to conduct through operations, protestants petitioned the Commission to consolidate the applications and conduct the hearings itself in order that the full facts might be developed.

This the Commission refused to do.

Later on upon petition of the railroad, the Commission did consolidate all of the applications and conducted a hearing itself for the purpose of revising the key point restrictions in accordance with the request of the railroad.

When this was done protestants thought they would be able to present their evidence and the Commission would be in a position to understand and appraise the scope of the entire operation.

But the Commission restricted the hearings so as to prevent protestants from developing any issues touching on public convenience and necessity or any other issue other than the railroad program relating to key points.

This situation has been briefed here and was developed fully before the Court below.

It is dealt with in Judge Paul's dissent.

At no time has the Commission ever held a hearing on these applications which covered the operations actually authorized.

At no time did the Commission ever hold a hearing on these applications in the light of what the Commission deems to be service auxiliary or supplemental to railroad service.

Throughout six years of continuous proceedings, appellants were repeatedly denied an opportunity to show their ability to serve the public and they were also denied an opportunity to show in what manner they would be injured by the operations which the railroad proposed to conduct.

———o———

It is for those reasons that appellants contend that they have been denied a fair and reasonable hearing.

The Commission's orders should be set aside because:

It has exceeded it jurisdiction and adopted a policy which only Congress can adopt.

It has not conducted proper hearings.

It has failed to make proper findings.

Respectfully

J. Ninian Beall
Roland Rice
Attorneys for Appellants

APPENDIX

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APPENDIX

Railroads.

CONGRESSIONAL RECORD VOL. 79.

Mr. Wheeler:

"Subsection (a) contains a comprehensive declaration of policy. As amended, it makes clear that the policy of Congress is to deal fairly and impartially with transportation by motor carriers and to preserve the natural advantages of such transportation.

"There was a fear upon the part of some of the bus and truck operators at first that if they were brought under the Interstate Commerce Commission they would not be dealt fairly with, and that their rates would be raised so as to make it possible for the railroads to get the business now carried on by them, but we specifically wrote into the bill, in the declaration of policy provision, and at other places throughout the bill, that the peculiar features of transportation by truck and by bus should be taken into consideration at all times by the Interstate Commerce Commission, and we put such a provision in the declaration of policy.

"The exercise of authority by the Commission under certain sections of the bill is directly related to the declaration of policy and the added provisions with respect to discrimination, preference, and unfair or destructive competitive practices lay a stronger and more definite basis for administrative action." (C. R. 5877).

* * *

Mr. Wheeler:

"The bill was drafted originally by Coordinator Eastman and approved by the Interstate Commerce Commission, which transmitted it to Congress. When it came to the committee and after the hearings, the committee took up the bill and spent every morning on it for perhaps a week and went over it in conjunction with Coordinator Eastman, and amended it and liberalized it as we felt it should be." (C. R. 5878).

* * *

Mr. Wheeler:

"This addition will check the filing of complaints where the purpose is solely that of harassing or crippling motor carriers.

"It was urged that some of the railroads might come in and file objections and try to harass the where there was not a valid reason stated the commission of its own motion might dismiss the complaint, if one person was merely seeking to harass another." (C. R. 4879).

* * *

Mr. Wheeler:

* * *

"Paragraph (d), on page 44, prohibits unjust discrimination or undue prejudice or disadvantage. The committee has added a provision that this prohibition shall not be construed to apply to the traffic of any other carrier of whatever description.

"In other words, some of the truck and bus operators were afraid that the railroads would come in and complain, and we added this provision so as doubly to protect the truck and bus operators." (C. R. 5882, 3).

Mr. Wheeler:

"As I see it, practically all the criticisms that have been made against the bill have been made on the theory that the Commission was not going to carry out the policies laid down by the measure. There has been a fear upon the part of some people—in my judgment, an unfounded fear—if the administration of this bill were turned over to the Interstate Commerce Commission, that Commission might regulate bus and truck transportation in the interest of the railroads and not in the interest of the general public, and that it might not give bus and truck operators a fair deal. It is fair to say to the Senate that the American Trucking Associations, Inc., and likewise the water carriers of the country, have insisted that the Commission should be reorganized and that a bill should be pased reorganizing the Commission if the

truck bill and the water-carrier bill should pass, so as to set up in the Interstate Commerce Commission a special division for the handling of each particular kind of transportation. Coordinator Eastman has made recommendation to that effect, and I wish to say to the Senate that I have promised both the water carriers, if their water-carrier bill shall pass, and likewise the bus and truck interests, that I would try to have passed a bill in accordance with the recommendations of Coordinator Eastman." (C. R. 5883).

* * *

"Mr. Dickson. Mr. President, I should like to inquire of the Senator from Montana whether he is familiar with the objections filed by the various farm organizations to this bill, setting forth five reasons for their opposition, and, if so, I should further like to ask him whether or not the bill has been amended to cover any of these objections which have been made?

"Mr. Wheeler. Mr. President, I will say to the Senator that I appreciate the fact that some of the farm organizations have filed protests against the bill. Mostly, however, they have been based on the theory that they were afraid the Interstate Commerce Commission was not going to regulate the busses and trucks as a separate institution; but we have exempted the casual or reciprocal transportation by the farmers from the operation of the bill should it become a law. In other words, any farmer who engages in casual trucking operations, say, from his farm to Des Moines, Iowa, for the purpose of carrying his products and his neighbor's products, is within the exemption.

"There has been propaganda by some who do not want any regulation to the effect that this bill would cause an increase of rates up to the standard of the railroad rates. That contention is not based upon any fact, but is based upon pure propaganda, in my judgment, and is without foundation.

"Coordinator Eastman has suggested—and we have written the suggestion into this bill specifically—that bus and truck operations should be viewed by the Commission in the peculiar light of their particular

business, and that railroad rates should not be the yardstick for the rates which should be established for bus and truck operators." (C. R. 5952).

Mr. Sadowski:

"The bill provides as follows:

"Section 202 sets forth the declaration of policy and vests jurisdiction in the Interstate Commerce Commission. I want to say in this connection that in reporting out this bill your committee has no intent to undertake to suppress or restrict in any way the proper development of motor-carrier transportation by responsible carriers for the good of the public interest. Nor do we want motor-carrier transportation subservient to or restrained or curtailed by any other transportation medium. The purpose of the bill is to provide for regulation that will foster and develop sound economic conditions in the industry, together with other forms of public transportation, so that highway transportation will always progress." (C. R. 12684).

"Mr. Mitchell of Tennessee. There is an idea that the railroads may operate the bus lines throughout the country. What does the gentleman say to that?

"Mr. Mapes. I think under the regulations by the Interstate Commerce Commission there is not much danger of that. Let me say that the bill does not contemplate that the Commission, if it does fix the rates, will fix the same rates as the railroads charge, but will only fix such rates as are necessary to allow a reasonable return to those engaged in the transportation of passengers and freight in interstate commerce by motor vehicles. (Applause.)" (C. R. 12688).

"Mr. Crawford. Mr. Chairman, the gentleman from New York gave a most interesting discussion on this bill. I wish I could agree with all of it. There is a staggering problem involved in this bill. It is hardly necessary for me to say that. But the shippers of this country cannot do without contract- and common-carrier truck service. We have gone away beyond the day when we can do only with rail transportation in the United States. That is past history. I am positive

that the railroad employees and railroad executives will be highly disappointed as the result of this legislation; yet at the same time, as one who has participated in our State, to a fairly large extent, in the creation of trucking companies, in the creation of truck service and in the use of that service in sheer self-defense, in sheer desperation to find transportation service which the railroads could not render and did not render with the equipment they had at that time and which they could not render with the equipment and service which they extend at the present time, I have seen so much damage to the industrial activities through transportation by unregulated and unmanaged common carriers that, based on experience, I shall have to vote for this legislation. I do that as one who has used, to the extent of millions of tons, trucks for shipping purposes, as one who believes so thoroughly in truck transportation. Still I shall vote for this bill. I shall vote for the bill, realizing that at the moment we do not, in my opinion, have a national transportation problem; that at the present time, in my opinion, we have a railroad problem of the widest proportion. Tonnage has shifted to trucks, not through something that the railroads did, but as a result of something they did not do; that is, they failed to give service. That is why the trucks got it." (C. R. 12689).

"Mr. Fulmer. Is it not a fact that the railroads are largely responsible for inviting this competition because of the extremely high freight rates and passenger rates, and in some instances discriminatory rates, and largely because of extra rates on short hauls? Have not the railroads by these practices absolutely forced this type of competition?

"Mr. Crawford. The gentleman is correct." (C. R. 12690).

SECTION 213 (NOW SEC. 5(b)).
CONGRESSIONAL RECORD, VOL. 79.

Mr. Wheeler:

"Section 213, page 35. Consolidation, merger, and acquisition of control: At present most truck operations are small enterprises. However, there are many

rumors of plans for the merging of existing operations into sizeable systems. In view of past experience with railroad and public-utility unifications, it is regarded as necessary that the Commission have control over such developments, where the number of vehicles involved is sufficient to make the matter one of more than local importance. This section, therefore, confers on the Commission jurisdiction over all consolidations, mergers, purchases, leases, operating agreements, and acquisitions of control through stock ownership where two or more motor carriers are involved or where a person other than a motor carrier undertakes to acquire control through stock ownership of two or more motor carriers, and prohibits all other forms of unification. An amendment made by the committee makes this jurisdictional applicable, except in the case of rail, express, or water carrier affiliations, only where the total number of vehicles involved is more than 20 (sub-par. (e), p. 39).

"In other words, we eliminated from this provision such a case, for example, as that of two small operators who might want to get together, and we made it apply only to cases where they had more than 20 vehicles, so that the small operators could get together without the necessity of going through a great deal of red tape with the Commission.

"The language of paragraph (a) has been simplified without change in the intent of the original bill, except for a broadening of its scope with respect to contract carriers and operations effected by the substitution of the term 'persons' for the term 'corporation', as in line 11, page 36.

"Carriers by rail, express, or water are permitted to consolidate or merge with motor carriers or to obtain control in any of the ways indicated above, but only on a showing that 'the transaction proposed will promote the public interest and enable such a carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.' With this limitation, it will be possible for the Commission to allow

acquisitions which will make for coordinated or more economical service and at the same time to protect the public against the monopolization of highway carriage by rail, express, or other interests." (C. R. 5881, 2).

Mr. Sadowski:

"Section 213 provides that the Commission shall control the consolidation, merger, and acquisition of control of motor carriers. I will say in this respect that it is the intent, and it is important to the welfare and progress of the motor-carrier industry that the acquisition of control of the carriers be regulated by the Commission so that the control does not get into the hands of other competing forms of transportation, who might use the control as a means to strangle, curtail, or hinder progress in highway transportation for the benefit of the other competing transportation." (C. R. 12685).

Congress Notes I. C. C. Disregard of Statutory Mandates

The Commissions policy has had its repercussions in the Congressional debates.

In 1935 when the Motor Carrier Act was passed, motor carriers and many members of Congress were afraid of the Commission and put in numerous amendments which were designed to require the Commission to administer the Act fairly. Congress thought it had made it clear that the Commission was to recognize the motor carrier industry as an independent transportation system and not regulate it as a mere adjunct to the railroads.

In 1940, Congress further amended the Interstate Commerce Act and gave the Commission jurisdiction over water carriers. Again many members of Congress were fearful of the Commission.

The committee assured the members that their fears were unfounded.

Let us see what members of Congress now think of the manner in which it has "regulated" motor carriers and water carriers. In the Senate debates, July 1, 1943, 89 Congressional Record, pages 6908-6910, there was under discussion the refusal of the railroads to cooperate with water carriers, and we find the following:

"Mr. Shipstead. Recently the Supreme Court of the United States handed down a decision that is of a great interest to Members of the Congress in connection with legislation which was enacted to assure transportation on the inland waterways and to protect producers who had hoped to make use of the inland waterways in the handling of the transportation of freight.

"Congress passed what was called the Transportation Act of 1940. That act placed under the control of the Interstate Commerce Commission the regulation of rates by rail, and truck, and also by barges on the inland waterways. There was a great deal of opposition to that bill in 1940 because many legislators feared—and so stated on the floor of the Senate as well as of the House—that the inland waterway transportation would suffer under the domination and regulation of the Interstate Commerce Commission for the reason that the Commission was said at that time by many Senators and Members of the House to be a railroad-minded body. Assurances were given, however, and a section was written into the law directing the Interstate Commerce Commission, in the regulation of rates, to give the benefit to the inherent savings which could be made by the waterways in the arrangement of rates, and providing that the Commission should not discriminate against the waterways, but that inherent advantage of low-cost water transportation should be protected.

"Under such assurances from the sponsors of the legislation and because of amendments which were added, the bill finally passed."

• • •

"Mr. La Follette. It is my recollection that the debate in the Senate at least left the clear understanding in the minds of Senators, so expressed in the record, that no such thing could ever happen under the conference report on the bill which was adopted.

"Mr. Shipstead. I so understand, and that is why I am calling this matter to the attention of the Senate at this time.

"Mr. La Follette. Is it not the opinion of the Senator from Minnesota that if there had been any other construction placed upon it, the bill would have been defeated?"

* * * * *

"Mr. Clark of Missouri. The Senator will recall that when the bill which became the Transportation Act of 1940 under consideration in this body, some of us stood on this floor for 3 days—I know the Senator from Minnesota and the Senator from Wisconsin did, and I know I did, and I know of several other Senators who did—and pointed out specifically the construction likely to be put upon the law by railroad-minded Interstate Commerce Commissioners, if we passed the bill in its then shape. It was vehemently and specifically denied for 3 days on this floor that any such construction was possible. I remember the representative of the Interstate Commerce Commission sitting right here on the floor next to the Senator from Montana (Mr. Wheeler), the chairman of the Committee on Interstate Commerce, and supplying him with denials that it was even remotely possible that such a construction could be put on the act as has actually been put on it. In my judgment, the measure could not have been passed through this body, or through the Congress, and probably would not have been signed by the President, except for those vehement denials as to the possibility of any such construction.

"We charged then that what has happened would happen; that the Interstate Commerce Commission, a railroad-minded body, would deliberately start out to destroy all efforts at water transportation. The Senate saw fit to believe protestations which were

made against any possibility of such an occurrence, but what we predicted has unfortunately and lamentably come to pass."

• • •

"Mr. Wheeler. Let me say that we did provide in the bill, and it was my understanding, that transportation by water, by truck, and every other kind of transportation would be taken into consideration by the Interstate Commerce Commission. I am as much opposed to the ruling which the Interstate Commerce Commission has made with respect to this matter as is the Senator from Missouri.

"Mr. Clark of Missouri. I am very certain that is true, and I am glad the Senator from Montana made the statement, because that has been his position at all times.

"Mr. Wheeler. That was my position then, it is my position now. The ruling of the Interstate Commerce Commission and the ruling of the Supreme Court are both contrary to the construction which I have placed on the law and the construction which I told the Senate would be placed on the law.

"I wish to say that I wanted the regulation to be made by the Interstate Commerce Commission, because I thought that Commission would at all times provide for rates to be fixed according to the inherent advantages of the different forms of transportation. As the Senator from Minnesota (Mr. Shipstead) knows, we have been holding hearings for the past 2 months upon proposed legislation to regulate the traffic bureaus of the country. Representatives of the Department of Justice have been heard at great length on the matter, and so have representatives of th railroads. We have not as yet concluded the hearings. They will be taken up again at the conclusion of the recess of Congress. I am hopeful that the Interstate Commerce Commission will recognize the inherent advantage of different forms of transportation. I will say that I have been disappointed by some of the rulings made by the Commission in permitting truck and bus rates to be raised to the level of railroad freight rates.

"There is a concerted effort now being made to permit railroads to get into the truck and bus business. When Congress reconvenes after the recess I intend to introduce proposed legislation to prevent railroads from owning busses and trucks. I think the railroad business should be divorced from the bus and truck business. I think the express companies, which are owned by the railroads, should not be permitted to engage in the trucking business. I think the railroads should not be in the trucking business; I think the railroads should not be in the water transportation business, and I think they should not own air transportation facilities.

"I know the idea exists in the minds of many persons in this country that all forms of transportation should be owned by one group. If that ever happens we will have no competition in transportation in the United States. I shall oppose my such movement with all my strength."

• • •

"Mr. Clark of Missouri. I am very happy indeed to hear the statement made by the Senator from Montana. It seems to me that until such time as we come to a system of monopolistic control, under which a man could go to an office at Helena, Mont., or Bowling Green, Mo., or Madison, Wis., or Bismarck, N. Dak., or any place else, and ask one responsible official what was the cheapest way for him to transport a bill of goods from one point to any place on the habitable globe, and have it routed by the cheapest possible route, whether by air, by rail, or by water, or part water, and part air, and part rail—a sort of monopolistic control which would necessarily mean Government ownership, as I see it—I say, Mr. President, until we come to such a time as that there ought to be the completest competition and separation between these various forms of transportation."

The comments of Senator Wheeler are particularly important because he was Chairman of the Senate Committee on Interstate and Foreign Commerce when both the Motor

Carrier Act and the Water Carrier Act was passed and he is still Chairman of that Committee.

We are on sound ground when we charge the Interstate Commerce Commission with disregard of its statutory duties and the intent of Congress.

INDEX TO TESTIMONY BY ISSUES

Failure And Refusal To Hear And Consider Evidence With Respect To The Relation Of Each Sub Application To Other Subapplications, And Disregarded The Refusal Of The Railroad Applicant To Accept Or Agree To Any Restrictions On The Operations Of The Sub.

Error Involved: These matters involve the jurisdiction of the various substandard joint boards under Section 205, and disregard the issue of convenience and necessity under Section 207, and disregard restraint of competition under Section 5 (old Section 213).

Transcript—Before Joint Boards

Jurisdiction challenged—Sub (2) (4) (5) (6), R. 530; Sub (3), R. 287-289; Sub (7), R. 425-428; Sub (9) (10), R. 659, 660; Sub (18), R. 836, 837; Sub (19) 918, 919.

References to other applications were excluded—Sub (3), R. 314; Sub (7), R. 424, 466-468, 483, 484.

Evidence—competitive effect—excluded—Sub (7), R. 464-466.

Evidence—railroad policy—excluded—Sub (3), R. 304; Sub (7), R. 484-488.

Evidence—Railroad Express Agency—excluded—Sub (2) (4) (5) (6), R. 540, 541, 542, 574, 575.

Railroad unwilling to restrict subapplications—MC 86687 and Sub (1), R. 345, 346, 381-383; Sub (2) (4) (5) (6), R. 545, 569, 570; Sub (3), R. 310, 311; Sub (7), R. 464, 488, 489.

Railroad policy is to parallel their lines—Sub (7), R. 496.

Railroad—objection to key points—Sub (3), R. 260-262.

Through operations—disclaimer based on schedules—Sub (2) (4) (5) (6), R. 570; Sub (7), R. 432, 433, 498-500.

When the Commission consolidated the dockets and held a further hearing, it likewise and more emphatically rejected evidence.

Transcript—Before The Commission

Evidence—coordination—excluded—R. 1116, 1117, 1226-1228.

Evidence—traffic involved——excluded—R. 1106, 1107, 119, 1120, 1209, et seq.

Evidence—economies—excluded—R. 1167, 1168.

Evidence—rates—excluded—R. 1115, 1208, 1209.

Evidence—use of railroad employees—excluded—R. 1145, 1146.

Evidence—restrictions—excluded—R. 1132, 1134.

Evidence—keeping of records—excluded—R. 1115-1117.

The Commission Failed And Refused To Develop And Consider Evidence Bearing On Coordination With Independent Motor Carriers And Adequacy Of Existing Service.

Error Involved: Lack of findings of fact in connection with convenience and necessity under Section 207, and restraint of competition under Section 5 (old Section 213).

Transcript—Before Joint Boards

Railroad refused to consider—MC 86687 and Sub (1), R. 381, 382; Sub (2) (4) (5) (6), R. 554-557; Sub (3), R. 281-283; Sub (7), R. 443; Sub (18), R. 844-845.

Railroad—not familiar with existing service—MC 86687 and Sub (1), R. 340, 381, 382, 397; Sub (3), R. 278, 279, 283, 284; Sub (7), R. 457, 458; Sub (18), R. 873; Sub (19) 954, 955, 966 et seq.

Existing truck service adequate—MC 86687 and Sub (1), R. 403, 404, 413, 419; Sub (2) (4) (5) (6), R. 618 et seq; Sub (7), R. 505-520; Sub (19), R. 1026 et seq.

Transcript—Before The Commission

Evidence—coordination rejected—R. 1116, 1117, 1226-1228.

The Commission Considered Only Railroad Convenience As Distinguished From Public Convenience And Necessity.

Error Involved: Lack of findings of fact in connection with convenience and necessity under Section 207 and restraint of competition under Section 5 (old Section 213).

Transcript—Before Joint Boards

Applications considered as railroad operations—Sub (3) R. 301, 302; Sub (9), R. 771, 772; Sub (19), R. 928.

Train connections—principal purpose—Sub (3), R. 248; Sub (8), R. 791 et seq.

Change train service—day to night—MC 86687 and Sub (1), R. 335, 378; Sub (7), R. 478, 479.

Train schedules—involved crew difficulties—MC 86687 and Sub (1), R. 391, 392.

Train connections—frequently missed—Sub (8), R. 791 et seq.

Train crews—relieved of handling l.c.l.—MC 86687 and Sub (1), R. 375.

Train stops—elimination—MC 86687 and Sub (1), R. 339, 347, 348, 371, 372; Sub (3), R. 284; Sub (7), R. 477, 478.

Train movements—expedited——MC 86687 and Sub (1), R. 366, 367; Sub (2) (4) (5) (6), R. 537, 538, 584, 600, 601; Sub (3), R. 247, 248; Sub (8), R. 788, 789; Sub (9), R. 750; Sub (15), R. 816, 817; Sub (18), R. 840, 868.

Changes contemplated in train schedules—MC 86687 and Sub (1), R. 365-367; Sub (3), R. 252.

Will handle both truck-load and less truck-load—Sub (3), R. 262, 263.

L.C.L. freight to be reduced—Sub (2) (4) (5) (6), R. 545; Sub (19), R. 994, 995.

Convenient to railroad regardless of truck finances—Sub (7), R. 461, 462.

Truck operations based on railroad economies—MC 86687 and Sub (1), R. 339, 347, 348, 372, 373; Sub (2) (4) (5) (6), R. 604, 605; Sub (3), R. 254, 255; Sub (9) (10), R. 675, 676; Sub (15), R. 817, 818; Sub (18), R. 868, 869; Sub (19), R. 993.

Will be no savings in train operations—MC 86687 and Sub (1), R. 339.

No train curtailments contemplated—MC 86687 and Sub (1), R. 339, 390, 391; Sub (2) (4) (5) (6), R. 538, 603, 604; Sub (3), R. 253, 254; Sub (7), R. 486; Sub (15), R. 825, 826; Sub (18), R. 841; Sub (19), R. 994, 995.

Transcript—Before the Commission

No known basis for determining when substituted or auxiliary service would be used in lieu of rail service—R. 1103-1109, 1113, 1114, 1115, 1123.

Railroad will use both coordinated and substituted service—R. 1112, 1113.

Removal of key point restrictions—based on railroad convenience—R. 1121.

The Commission Failed And Refused To Determine And Consider The Amount Of Traffic Involved, The Prospective Revenues And Expenses, And The Offers Of Independent Carriers To Cooperate.

Error Involved: Lack of findings in connection with determination of convenience and necessity under Section 207 and restraint of competition under Section 5 (old Section 213).

Transcript—Before Joint Boards

Railroad has no information—traffic—way stations—Sub (3), R. 263-265.

Railroad—no revenue estimate on any basis—Sub (3), R. 285, 286.

Motor carriers offered to cooperate—MC 86687 and Sub (1) R. 399-402, 408-415; Sub (2) (4) (5) (6) R. 618-620, 648-650; Sub (7) R. 503, 504; Sub (19) R. 1037, 1038.

No difference in interchanging with motor carriers and interchanging with rail lines—Sub (7) R. 454-456.

Diversion of revenues—reason for not coordinating—Sub (2) (4) (5) (6) R. 555, 556; Sub (7) R. 450, 451.

Short haul—reason for not interchanging—Sub (2) (4) (5) (6) R. 637, 638; Sub (9) (10) R. 773, 774.

Supervision of employees—reason for not coordinating—Sub (7) R. 443, 444.

Disclosure of business—reason for not coordinating Sub (7) R. 443, 444.

Would not coordinate with independent carriers if all purposes were served—Sub (2) (4) (5) (6) R. 554, 555; Sub (9) (10) R. 730, 731.

Independent carriers only operating at 40 per cent of capacity—Sub (19), R. 1037, 1038.

Transcript—Before the Commission

Evidence—traffic—excluded—R. 1106, 1107.

No information re movements wholly by truck—R. 1119, 1120.

Tonnage could be given if required by the Interstate Commerce Commission—R. 1117, 1119.

Interstate and intrastate traffic could be determined if required by Interstate Commerce Commission—R. 1117-1120.

Volume of carload and less-car-load could be determined if required by Interstate Commerce Commission—R. 1119, 1120.

The Commission Failed And Refused To Determine And Consider Revenues And Expenses, Use Of Railroad Facilities And Employees, And Necessity For Separate Accounting.

Error Involved: Failure to make findings for certificates under Section 207, and finding with respect to restraint of competition Section 5 (old Section 213).

Transcript—Before Joint Boards

The financial results unknown—Sub (7), R. 462, 480, 481.

No overhead costs included in estimates—Sub (2) (4) (5) (6) R. 584, 585; Sub (7) R. 439, 459, 460, 462; Sub (15) R. 821-823; Sub (18) R. 891.

Costs and revenues are intermingled with Railroad figures—MC 86687 and Sub (1) R. 341, 342, 347; Sub (2) (4) (5) (6) R. 569, 572, 573; Sub (3) R. 301, 302; Sub (7) R. 452, 453, 472, 490, 491, 496; Sub (18) R. 842.

I. C. C. motor carrier accounting rules—unknown to railroad—MC 86687 and Sub (1) R. 347, 348.

Will use railroad agents—Sub (3) R. 255; Sub (7) R. 472.

Will use railroad stations—Sub (3) R. 255.

Will use railroad bills of lading—MC 86687 and Sub (1) R. 340, 341; Sub (3) R. 247, 248; Sub (19) R. 1020, 1021.

Accounts could be separated if required by Interstate Commerce Commission—Sub (7) R. 472, 473.

Railroad truck operations are losing money—Sub (19) R. 938.

Use of railroad facilities—reduced cost below independent carriers—Sub (7) R. 454.

Transcript—Before the Commission

Will use railroad rates—R. 1115.

Examination and expenses will be intermingled with railroad figures—R. 1110, 1115.

The Commission Failed And Refused To Develop And Consider That The Railroad Proposed To Take Traffic Away From The Independent Motor Carriers, And That The Railroads Had No Basis Whatever For Determining A Key Point Or Distribution Point, Or When Auxiliary Or Supplemental Service Would Be Substituted For Straight Rail Service.

Error Involved: These issues involve the failure to make findings which the Commission must make in determining convenience and necessity under Section 207, and the finding which the Commission must make with respect to restraint of competition under Section 5 (old Section 213).

Transcript—Before Joint Boards

Railroad expects to divert traffic from other carriers—Sub (3) R. 279, 280.

Railroad expects to regain business—MC 86687 and Sub (1) R. 380, 381; Sub (2) (4) (5) (6) R. 568, 569, 617, 618; Sub (7) R. 500, 501; Sub (8) R. 809, 810; Sub (18) R. 844, 845; Sub (19), R. 967, 968.

Railroad expects to get new business—MC 86687 and Sub (1) R. 379, 380; Sub (2) (4) (5) (6) R. 568, 569; Sub (15) R. 827.

Will be competitive with independent trucks—Sub (3) R. 255, 256.

Transcript—Before the Commission

Railroad has no data on costs and savings—R. 1157, 1158.

Railroad has no basis for determining when coordinated or substituted service could be used to advantage, or any basis for the establishment of key point restrictions other than railroad convenience—R. 1103-1109, 1112-1115, 1121, 1123.

STIPULATION NO. 2

It is stipulated and agreed by and between American Trucking Associations, Inc., Interstate Commerce Commission, and Legh R. Powell, Jr., and Henry W. Anderson,

Receivers of the properties of Seaboard Air Line Railway Company, that said Receivers, by timely action on their part, filed with the Interstate Commerce Commission, as a part of their tariffs publishing charges for the transportation of less-than-carload shipments by rail, a provision that the rates therein published shall apply to the transportation of less-than-carload shipments by motor vehicle in substitution for rail service wherever such substituted service is provided; that the points to and from which said substituted service is provided by said Receivers are designated in a tariff concurrently filed with the said Commission known as Kipp's National Substituted Freight Service Directory No. 1-D, I. C. C. No. A-3503, M. F.-I. C. C. No. A-150, and that said provisions in the rate tariffs and the said National Substituted Freight Service Directory were filed and published by the said Receivers as in accordance with the requirements prescribed by the Interstate Commerce Commission governing the filing of tariffs by motor carriers in Ex Parte 129, 232 I. C. C. 683.

It is further stipulated and agreed that said tariffs are applicable to the substitution of motor carrier service for rail carrier service for shipments receiving a prior or subsequent movement by rail as well as to shipments moving entirely by motor carrier service operated by said Receivers.

It is understood and agreed that nothing herein shall preclude the said American Trucking Association from contending that the said requirements of the Interstate Commerce Commission exceeded its powers under the Interstate Commerce Act or shall prevent the said Commission or the said Receivers from contending that the averments of the complaint herein respecting the failure and refusal of the said Commission to require the said Receivers to comply with Section 217 of the Interstate Commerce Act are not cognizable by the Court in this cause.

J. NINIAN BEALL,
Attorney for Plaintiffs,
DANIEL H. KUNKEL,
Attorney for Interstate Commerce Commission, Defendant.
W. R. C. COCKE,
THOMAS L. PRESTON,
CHAS. T. ABELES,
Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
Plaintiffs,

v.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,
Defendants.

Civil Action No. 285.

STIPULATION NO. 3

It is stipulated and agreed by and between American Trucking Associations, Inc., Interstate Commerce Commission and Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, that upon petition by said Receivers to the Interstate Commerce Commission showing that the accounts maintained by said Receivers do not segregate the

revenues and expenses of their motor carrier operations from the revenues and expenses of their rail operations, a true and correct copy of which petition is attached hereto and made a part hereof, the said Commission by order issued pursuant to Section 220 of the Interstate Commerce Act, a true and correct copy of which is attached hereto and made a part hereof, authorized the said Receivers, in accordance with its general practice in such cases, to include in their reports required by said Commission of common carriers by railroad a statement of all revenues derived from and expenses incurred in their motor carrier operations, and to that extent relieved the said Receivers from reporting separately the revenues and expenses of their rail and motor carrier operations.

It is understood and agreed that nothing herein shall preclude the American Trucking Associations, Inc., from contending that the said order of the Interstate Commerce Commission exceeded its powers under the Interstate Commerce Act, or shall prevent the said Interstate Commerce Commission or the said Receivers from contending that the averments of the complaint herein respecting the failure and refusal of the Commission to require said Receivers to comply with Section 220 of the Interstate Commerce Act are not cognizable by the Court in this cause.

J. NINIAN BEALL,
Attorney for Plaintiffs,
DANIEL H. KUNKEL,
Attorney for Interstate Commerce Commission, Defendant,
W. R. COCKE,
THOMAS L. PRESTON,
CHAS. T. ABELES,
Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

SEABOARD AIR LINE RAILWAY

L. R. Powell, Jr., and Henry W. Anderson,
Receivers.

FINANCE AND ACCOUNTING

R. Parke Jones,
Chief Finance and Accounting Officer.

Norfolk, Va., January 19, 1938.
5257, 5817, 5898.

Mr. W. P. Bartel, Secretary,
Interstate Commerce Commission,
Washington, D. C.

Dear Sir:—

Reference is made to order of the Interstate Commerce Commission, dated November 29, 1937, prescribing, effective January 1, 1938, a Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property subject to the Motor Carrier Act of 1935; also Commissioner Joseph B. Eastman's letter of December 21, 1937, addressed to Mr. E. H. Bunnell, Vice-President, Association of American Railroads.

The Receivers of the Seaboard Air Line Railway engage in motor operations over routes paralleling certain parts of its line of railroad, the service furnished thereby being in conjuntion with and auxiliary to its rail line operations. No separate corporation is involved. Separation of the revenues earned by motor and rail operations, respectively, has not been maintained, the entire revenues from both rail and motor operations being accounted for under the Uniform System of Accounts for Steam Roads prescribed by the I. C. C.

The order of the I. C. C. dated November 29, 1937 prescribing a Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property subject to the Motor Carrier Act of 1935 defines a Class I carrier,

as referred to in that order, as a carrier having average gross revenues of $100,000 or over annually from its motor operations for the three years immediately preceeding January 1, 1938. As there has been no separation of the revenues derived by Seaboard Air Line Railway from motor operations and rail operations, ascertainment as to whether such motor operations fall within the Class I classification of motor carriers is not possible for the reason that a record has not been kept of the traffic handled by our trucks in a way that would enable us to identify such traffic with the waybills.

In conformity with the suggestion contained in Commissioner Joseph B. Eastman's letter of December 21st, above referred to, application for exemption from the requirements of the Uniform System of Accounts prescribed for Class I Common and Contract Motor Carriers effective January 1, 1938 is hereby made, but for the reasons given in the next preceeding paragraph such application should not be considered as implying that our operations are subject to such accounting regulations.

Very truly yours,

R. P. JONES,
Chief Finance and Accounting Officer.

ORDER

INTERSTATE COMMERCE COMMISSION.

Ex Parte No. MC 17.

UNIFORM SYSTEM OF ACCOUNTS FOR CLASS I COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY.

In the matter of granting temporary exemption, under certain conditions, from the requirements of the Uniform System of Accounts for Class I Common and Contract

Motor Carriers of Property, to carriers which perform steam or electric urban or interurban railway service and motor carrier service under the same corporate entity:

PRESENT: Joseph B. Eastman, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the petition of Seaboard Air Line Railway, dated January 19, 1938, in the above entitled matter:

It is ordered, That the said Seaboard Air Line Railway be, and is hereby, exempted from the requirements of the Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property, effective January 1, 1938, until further order of the Commission, provided, however, that the accounts of the said Seaboard Air Line Railway are maintained in conformity with the accounting system described in said petition.

Dated at Washington, D. C., this 28th day of January, A. D. 1938.

By the Commission, Commissioner Eastman.

(SEAL) W. P. BARTEL, *Secretary.*

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or ad-

vantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

PART II

(U. S. Code, Supp. I, Title 49, Secs. 301, et seq.)

AN ACT to amend the Interstate Commerce Act, as amended, by providing for the regulation of the transportation of passengers and property by motor carriers operating in interstate or foreign commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act, as amended, herein referred to as "Part I," is hereby amended by inserting at the beginning thereof the caption "Part I," and by substituting for the words "this Act," wherever they occur, the words "this part," but such Part I may continue to be cited as the "Interstate Commerce Act," and said Interstate Commerce Act is hereby further amended by adding the following Part II:

SHORT TITLE

SEC. 201. This part may be cited as Part II of the Interstate Commerce Act.

APPLICATION OF PROVISIONS

SEC. 202. (a) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the pro-

curement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(b) Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

(c) Notwithstanding any provision of this section or of Section 203, the provisions of this part shall not apply—

(1) To transportation by motor vehicle by a carrier by railroad subject to Part I or by a water carrier subject to Part III, incidental to transportation subject to such parts, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to Part I when performed by such carrier by railroad, and transportation subject to Part III when performed by such water carrier.

(2) To transportation by motor vehicle by any person (whether as agent or under a contractural arrangement) for a common carrier by railroad subject to Part I, an express company subject to Part I, a motor carrier subject to this part, or a water carrier subject to Part III, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be performed by such carrier or express company as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water to which such services are incidental.

DEFINITIONS

SEC. 203. (a) As used in this part—

(1) The term "person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representatives thereof.

(2) The term "board" or "State board" means the commission, board, or official (by whatever name designated in the laws of a State) which, under the laws of any State in which any part of the service in interstate or foreign commerce regulated by this part is performed, has or may hereafter have jurisdiction to grant or approve certificates of public convenience and necessity or permits to motor carriers, or otherwise to regulate the business of transportation by motor vehicles, in intrastate commerce over the highways of such State.

(3) The term "Commission" means the Interstate Commerce Commission.

(4) The term "joint board" means any special board constituted as provided in Section 205 of this part.

(5) The term "certificate" means a certificate of public convenience and necessity issued under this part to common carriers by motor vehicle.

(6) The term "permit" means a permit issued under this part to contract carriers by motor vehicle.

(7) The term "license" means a license issued under this part to a broker.

(8) The term "State" means any of the several States and the District of Columbia.

(9) The term "express company" means any common carrier by express subject to the provisions of Part I.

(10) The term "interstate commerce" means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

(11) The term "foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

(12) The term "highway" means the roads, highways, streets, and ways in any State.

(13) The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

(14) The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to Part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to Part I.

(15) The term "contract carrier by motor vehicle" means any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (14) and the exception therein) by motor vehicle of passengers or property in interstate or foreign commerce for compensation.

(16) The term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

(17) The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle," who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

(18) The term "broker" means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this part, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation.

(19) The "services" and "transportation" to which this part applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith.

(20) The term "interstate operation" means any operation in interstate commerce.

(21) The term "foreign operation" means any operation in foreign commerce.

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GENERAL DUTIES AND POWERS OF THE COMMISSION

SEC. 204. (a) It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

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(6) To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration; and

(7) For purposes of the administration of the provisions of this part, to inquire into the management of the business of motor carriers and brokers, and into the management of the business of persons controlling, controlled by, or under common control with, motor carriers to the extent that the business of such persons is related to the managment of the business of one or more motor carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this part; and may transmit to Congress from time to time, such recommendations (in-

cluding recommendations as to additional legislation) as the Commission may deem necessary.

(b) The Commission may from time to time establish such just and reasonable classifications of brokers or of groups of carriers included in the term "common carrier by motor vehicle," or "contract carrier by motor vehicle," as the special nature of the services performed by such carriers or brokers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this part, to be observed by the carriers or brokers so classified or grouped, as the Commission deems necessary or desirable in the public interest.

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ADMINISTRATION*

SEC. 205 (a) The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Application for certificates, permits, or licenses; the suspension, change, or revocation of such certificates, permits, or licenses; applications for the approval and authorization of consolidations, mergers, and acquisitions of control or operating contracts; complaints as to violations by motor carriers or brokers of the requirements established under Section 204(a); and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: *Provided, however,* That if the Commission is prevented by legal proceedings from referring a matter to a joint board, it may determine such matter as

provided in Section 17. The Commission, in its discretion, may also refer to a joint board any investigation and suspension proceeding or other matter not specifically mentioned above which may arise under this part. The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are proposed to be conducted: *Provided,* That the Commission may designate an examiner or examiners to advise with and assist the joint board under such rules and regulations as it may prescribe. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers, and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon: *Provided, however,* That a joint board may, in its discretion, report to the Commission its conclusions upon the evidence received, if any, without a recommended order. Orders recommended by joint boards shall be filed with the Commission, and shall become orders of the Commission and become effective in the same manner, and shall be subject to the same procedure, as provided in the case of orders recommended by members or examiners under Section 17. If a joint board to which any matter has been referred shall report its conclusions upon the evidence without a recommended order, such matter shall thereupon be decided by the Commission, giving such weight to such conclusions as in its judgment the evidence may justify.

(b) Whenever there arises in the administration of this part any matter that the Commission is required to refer to a joint board, or that the Commission determines, in its discretion, to refer to a joint board, the Commission shall, if no joint board eligible to consider said matter is in existence, create a joint board to consider the matter when referred, and to recommend appropriate order there-

on. The Commission shall prescribe rules governing meetings and procedure of joint boards and may, in the event of legal proceedings preventing reference to a joint board, determine the matter as provided in Section 17. Except as hereinafter provided, a joint board shall consist of a member from each State in which the motor carrier or brokerage operations involved are or are proposed to be conducted. The member from any such State shall be nominated by the board of such State from its own membership or otherwise; or if there is no board in such State or if the board of such State fails to make a nomination when requested by the Commission, then the Governor of such State may nominate such member. The Commission is authorized to appoint as a member upon the joint board any such nominee approved by it. If both the board and the Governor of any State shall fail to nominate a joint board member when requested, then the joint board shall be constituted without a member from such State, if members for two or more States shall have been nominated and approved by the Commission. All decisions and recommendations by joint boards shall be by majority vote. If the board of each State from which a member of a joint board is entitled to be appointed shall waive action on any matter referred to such joint board, or if any joint board fails or refuses to act, or is unable to agree upon any matter submitted to it within forty-five days after the matter is referred to it or such other period as the Commission may authorize, or if a member shall not be nominated for more than one State (except only when the operations proposed shall be into or through territory foreign to the United States), then such matter shall be decided as in the case of any matter not required to be referred to a joint board. The failure of a duly appointed member of a joint board to participate in any hearing on a matter referred to such joint board, after notice thereof, shall be considered to constitute, as to the matter referred, a waiver of action on the part of the State from

which such member was appointed. When any proceeding required to be referred to a joint board shall involve operations of a motor carrier conducted or proposed to be conducted into or through territory foreign to the United States, if a single State shall be involved, or if only one State shall make nomination of a point board member through its Governor or State board, then the Commission, in such case, may receive from that State the nomination of not more than three members and may appoint such nominees to constitute the joint board. Members of joint boards when administering the provisions of this part shall receive such allowances for travel and subsistence expenses as the Commission shall provide. A joint board shall continue in existence for the consideration of matters referred to it by the Commission until such time as its existence may be terminated by the Commission. A substitution of membership upon a joint board from any State may be made at any time by nomination and appointment in the same manner as an original nomination and appointment.

(c) Where practicable and as the Commission may by rule or order direct, hearings by any member, examiner or joint board upon any matter referred to him or to such board shall be held at such places within the United States as are convenient to the parties.

(d) So far as may be necessary for the purposes of this part, the Commission and the members and examiners thereof and joint boards shall have the same power to administer oaths, and require by subpoena the attendance and testimoney of witnesses and the production of books, papers, tariffs, contracts, agreements, and documents, and to take testimony by deposition, relating to any matter under investigation, as the Commission has in a matter arising under Part I; and any person subpoenaed or testifying in connection with any matter under investigation under this part shall have the same rights, privileges,

and immunities and be subject to the same duties, liabilities, and penalties as though such matter arose under Part I, unless otherwise provided in this part.

(e) In accordance with rules prescribed by the Commission, reasonable notice shall be afforded, in connection with any proceeding under this part, to interested parties and to the board of any State, or to the governor if there be no board, in which the motor-carrier operations involved in the proceeding are or are proposed to be conducted, and opportunity for intervention in any such proceeding for the purpose of making representations to the Commission or for participating in a hearing, if a hearing is held, shall be afforded to all interested parties.

(f) The Commission is authorized to confer with or to hold joint hearings with any authorities of any State in connection with any matter arising in any proceedings under this part. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities as fully as may be practicable, in the enforcement or administration of any provision of this part. From any space in the Interstate Commerce Commission Building not required by the Commission, the Government authority controlling the allocation of space in public buildings shall assign for the use of the national organization of the State commissions and of their representatives suitable office space and facilities which shall be at all times available for the use of joint boards created under this part and for members and representatives of such boards cooperating with the Commission or with any other Federal commission or department under this or any other Act; and if there be no such suitable space in the Interstate Commerce Commission Building, the same shall be assigned in some other building in convenient proximately thereto.

(g) Any final order made under this part shall be subject to the same right of relief in court by any party

in interest as is now provided in respect to orders of the Commission made under Part I: *Provided*, That, where the Commission, in respect of any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under the Urgent Deficiency Appropriations Act, October 22, 1913, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction.

(h) All the provisions of Section 17 of Part I shall apply to all proceedings under this part.

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APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

SEC. 206. (a) Except as otherwise provided in this section and in Section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however,* That, subject to Section 210, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, and has so operated since that time except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring sought to be acquired by the persons proposing in such

further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in Section 207(a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further,* That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

(b) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulation, require. Any person, not included within the provisions of paragraph (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier by motor vehicle when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if ap-

plication for such certificate is made to the Commission within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission.

ISSUANCE OF CERTIFICATE

SEC. 207. (a) Subject to Section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificates shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

(b) No certificate issued under this part shall confer any proprietary or property rights in the use of the public highways.

TERMS AND CONDITIONS OF CERTIFICATE

SEC. 208. (a) Any certificate issued under Section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limita-

tions as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under Section 204(a) (1) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

* * *

TEMPORARY GRANT OF AUTHORITY

210a. (a) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify but for not more than an aggregate of 180 days, and shall create no presumption that corresponding permanent authority will be granted thereafter.

(b) Pending the determination of an application filed with the Commission for approval of a consolidation or merger of the properties of two or more motor carriers, or of a purchase, lease, or contract to operate the properties of one or more motor carr[illegible] the Commission may, in its discretion, and without hearings or other proceedings, grant temporary approval, for a period not exceeding 180 days, of the operation of the motor carrier properties pending application to acquire such properties, if it shall appear that failure to grant such temporary approval

may result in destruction of or injury to such motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

(c) Transportation service rendered under such temporary authority shall be subject to all applicable provisions of this part and to the rules, regulations, and requirements of the Commission thereunder.

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CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

SEC. 213. (Repealed September 18, 1940. Provisions, with amendments, incorporated in Section 5 of Part I. See page 36 of Appendix I.)

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RATES, FARES, AND CHARGES OF COMMON CARRIERS BY MOTOR VEHICLE

SEC. 216. (a) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation

of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

(c) Common carriers of propery by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(d) All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or de-

scription of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(e) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of Section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes, and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be

operated; *Provided, however,* That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

(f) Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that the division of joint rates, fares, or charges, applicable to the transportation in interstate or foreign commerce of passengers or property by common carriers by motor vehicle or by such carriers in conjunction with common carriers by railroad and/or express, and/or water are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the Commission finds justified and, in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

* * * *

(i) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transporta-

tion of passengers or property by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

(j) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

TARIFFS OF COMMON CARRIERS BY MOTOR VEHICLE

SEC. 217. (a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points or its route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rate, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

* * *

ACCOUNTS, RECORDS AND REPORTS

SEC. 220. (a) The Commission is hereby authorized to require annual, periodical, or special reports from all motor carriers, brokers, and lessors (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers, brokers, and lessors specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary. Such annual reports shall give an account of the affairs of the carrier, broker, or lessor in such form and detail as may be prescribed by the Commission. The Commission may also require any motor carrier or broker to file with it a true copy of any contract, agreement, or arrangement between such carrier and any other carrier or person in relation to any traffic affected by the provisions of this part. The Commission shall not, however, make public any contract, agreement, or arrangement between contract carrier by motor vehicle and a shipper, or any of the terms or conditions thereof, except as a part of the record in a formal proceeding where it considers such action consistent with the public interest: *Provided*, That if it appears from an examination of any such contract that it fails to conform to the published schedule of the contract carrier by motor vehicle as required by Section 218(a), the Commission may, in its discretion, make public such of the provisions of the contract as the Commission considers necessary to disclose such failure and the extent thereof.

(b) Said annual reports shall contain all the required information for the period of twelve months ending on the thirty-first day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional

time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under subsection (a) hereof shall also be under oath, whenever the Commission so requires.

(c) The Commission may prescribe for motor carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. When the Commission shall have exercised its authority under the foregoing provisions of this subsection, motor carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no such carrier shall include under operating expenses any depreciation charge in any form whatsoever other than as prescribed by the Commission.

(d) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by motor carriers, brokers, and lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys; and it shall be unlawful for such carriers, brokers, and lessors to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto. The Commission may issue orders, specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of motor carriers, brokers, or lessors as may after a reasonable time be destroyed, and prescribing the length of time the same shall be pre-

served. The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to and authority, under its orders, to inspect and examine any and all lands, buildings, or equipment of motor carriers, brokers, and lessors; and shall have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of such carriers, brokers, and lessors, and such accounts, books, records, memoranda, correspondence, and other documents of any person controlling, controlled by, or under common control with any such carrier, as the Commission deems relevant to such person's relation to or transactions with such carrier. Motor carriers, brokers, lessors, and persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and copying authorized by this paragraph, and motor carriers, brokers, and lessors shall submit their lands, buildings, and equipment for examination and inspection, to any duly authorized special agent, accountant, or examiner of the Commission upon demand and the display of proper credentials.

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SEC. 5—POOLING; UNIFICATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

(1) Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of Section 1 of this part, it shall be unlawful for any common carrier subject to this part, Part II, or Part III to enter into any contract, agreement, or combination with any other such common carrier or carriers for the pooling or division of traffic, or of service, or of gross or net earnings, or of any portion thereof; and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separte offense: *Provided*, That whenever the Commission is of opinion, after hearing

upon application of any such carrier or carriers or upon its own initiative, that the pooling or division, to the extent indicated by the Commission, of their traffic, service, or gross or net earnings, or of any portion thereof, will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition, the Commission shall by order approve and authorize, if assented to by all the carriers involved, such pooling or division, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises: *Provided further,* That any contract, agreement, or combination to which any common carrier by water subject to Part III is a party, relating to the pooling or division of traffic, service, or earnings, or any portion thereof, lawfully existing on the date this paragraph as amended takes effect, if filed with the Commission within six months after such date, shall continue to be lawful except to the extent that the Commission, after hearing upon application or upon its own initiative, may find and by order declare that such contract, agreement, or combination is not in the interest of better service to the public or of economy in operation, or that it will unduly restrain competition.

(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers

through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in Section 205(e), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modification as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed

will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

* * *

LEGISLATIVE CHANGES

Setting forth details of additions and deletions in original Motor Carrier Act, 1935, caused by amendements in 1938 and 1940.

* * *

Key to changes:

Straight Type—Text of Original Act

Italics—Additions in 1940

Roman Bold—Deletions in 1940

SMALL CAPS—Additions in 1938

BOLD CAPS—Deletions in 1938

SHORT TITLE

Sec. 201. This part may be cited as **the "Motor Carrier Act, 1935."** *part II of the Interstate Commerce Act.*

Declaration of Policy and Delegation of Jurisdiction

APPLICATION OF PROVISIONS

Sec. 202. (a) It is hereby declared to be *the national transportation* policy of *the* Congress **to regulate transportation by motor carriers in such manner** *to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered* as to recognize and preserve the inherent advantages of *each;* **and foster sound economic conditions in, such transportation and among such carriers in the public interest;** *to* promote *safe,* adequate, economical, and efficient service

by motor carriers, and *foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of* reasonable charges **therefor** *for transportation services* without unjust discriminations, undue preferences or advantages, **and** *or* unfair or destructive competitive practices; **improve the relations between, and coordinate transportation by and regulation of motor carriers and other carriers** *to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of* developing, *coordinating,* and preserving a **highway** *national* transportation system **properly adapted to** *by water, highway, and rail, as well as other means, adequate to meet* the needs of the commerce of the United States, *of the Postal Service,* and of the national defense, **and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.** *All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.*

Sec. 202. **(b)** *(a)* The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(c) *(b)* Nothing in this part shall be construed to affect the powers of taxation of the several states or to authorize a motor carrier to do an intrastate business on the highways of any state, or to interfere with the exclusive exercise by each state of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

(c) Notwithstanding any provision of this section or of section 203, the provisions of this part shall not apply—

(1) to transportation by motor vehicle by a carrier by railroad subject to part I or by a water carrier subject to part III, incidental to transportation subject to such parts, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad, and transportation subject to part III when performed by such water carrier.

(2) to transportation by motor vehicle by any person (whether as agent or under a contractural arrangement) for a common carrier by railroad subject to part I, an express company subject to part I, a motor carrier subject to this part, or a water carrier subject to part III, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be performed by such carrier or express company as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water to which such services are incidental.

DEFINITIONS

Sec. 203. (a)—(No change in paras, (1) to (12), incl.)

(13) The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, OR ANY COMBINATION THEREOF DETERMINED BY THE COMMISSION, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, *or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.*

(14) The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by lease or any other arrangement to transport *holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of* passengers or property or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle *thereof* for compensation, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of Part I *except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to part I.*

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RAILROAD CERTIFICATES

(Partial list and exclusive of Railway Express Agency).

Great Northern Railway Co. Common Carrier Appl	1 M. C. C. 73
Penna. Truck Lines, Inc.—Acquisition of Control	1 M. C. C. 101
Santa Fe Transp. Co.—Purchase—Rex	5 M. C. C. 1
Penna. Truck Lines, Inc.—Control—Barker M. Frt.	5 M. C. C. 9
Penna. Truck Lines, Inc—Purchase—Cain	5 M. C. C. 73
Penna. Truck Lines, Inc.—Control—Alko Exp. Lines	5 M. C. C. 77
Texas & Pac. Motor Transport Co.—Purchase—Johnson	5 M. C. C. 89
Santa Fe Transp. Co.—Purchase—Schaeffer	5 M. C. C. 115

Burlington Transp. Co.—Purchase—Bell Transfer, Inc ..... 5 M. C. C. 291
Pacific M .Trucking Co.—Control—People Frt. Line, Inc ..... 5 M. C. C. 302
Rock Island M. T. Co.—Purchase—White Line M. Frt ..... 5 M. C. C. 451
Motor Transport Co.—Purchase—Jansen.... 5 M. C. C. 570
Rock Island M. Transit Co.—Purchase—Burlington Transp ..... 5 M. C. C. 629
Rio Grande Motor Way Inc.—Purchase—Colman ..... 5 M. C. C. 643
Texas & Pac. Motor Transport—Purchase—Southern Transp ..... 5 M. C. C. 653
Burlington Transp. Co.—Purchase—Sand.... 5 M. C. C. 658
Kansas City S. Transp. Co., Inc., Common Carrier Appl ..... 10 M. C. C. 221
Texas & Pac. Motor Transport Co., Common Carrier Appl ..... 12 M. C. C. 37
Illinois Central R. Co., Common Carrier Appl ..... 12 M. C. C. 485
Santa Fe Trail Transp., Common Carrier Appl ..... 14 M. C. C. 577
Texas & Pac. Motor Transport Co.—Extension ..... 14 M. C. C. 645
Texas & Pac. Motor Transport Co.—Extension ..... 14 M. C. C. 649
Minneapolis & St. L. R. Co.—Purchase—Brown ..... 15 M. C. C. 54
Missouri Pac. Frt. Transp. Co.—Purchase—Miller ..... 15 M. C. C. 269
Southern Pac. Transp. Co.—Purchase—Sanders ..... 15 M. C. C. 299
Southern Pac. Transp. Co.—Purchase—Pilarczyk ..... 15 M. C. C. 309
Frisco Transp. Co.—Purchase—Cooper..... 15 M. C. C. 317
Frisco Transp. Co.—Purchase—Hamm..... 15 M. C. C. 320
Frisco Transp. Co.—Purchase—Rose..... 15 M. C. C. 323

Pacific Motor Trucking Co.—Purchase—
Keithly ..... 15 M. C. C. 427
Burlington Transp. Co.—Purchase—
Busskohl ..... 15 M. C. C. 691
Gulf, M. & N. R. Co., Common Carrier Appl. 18 M. C. C. 721
Missouri Pac. R. Co., Extension ..... 19 M. C. C. 605
Great Northern Ry. Co., Extension ..... 19 M. C. C. 745
Missouri Pac. R. Co., Extension ..... 20 M. C. C. 563
Willett Co. of Ind., Inc., Extension ..... 21 M. C. C. 405
Rock Island Motor Transit Co., Common
Carrier Appl ..... 21 M. C. C. 513
Pacific Motor Trucking Co., Common
Carrier Appl ..... 21 M. C. C. 761
Barcus Extension ..... 22 M. C. C. 147
Louisiana, A. & T. Ry. Co., Common
Carrier Appl ..... 22 M. C. C. 213
Penna. Truck Lines, Inc., Common
Carrier Appl ..... 24 M. C. C. 261
Rock Island M. Transit Co.—Purchase—
Clark ..... 25 M. C. C. 87
Frisco Transp. Co.—Purchase—Parker ..... 25 M. C. C. 96
Rock Island M. Transit Co.—Purchase—
Peterson ..... 25 M. C. C. 153
Southern Pac. Transport Co.—Purchase—
Beckman ..... 25 M. C. C. 179
Rock Island M. Transit Co.—Purchase—
Swaim ..... 25 M. C. C. 350
Haggerty Contract Carrier Appl. ..... 26 M. C. C. 413
Kansas City S. Transport Co., Inc., Common
Carrier Appl ..... 28 M. C. C. 5
White Common Carrier Appl. ..... 29 M. C. C. 599
Rock Island Motor Transit Co.—Extension 29 M. C. C. 695
Northern Pac. Transport Co., Extension ..... 30 M. C. C. 58
Rock Island Motor Transit Co.—Extension 30 M. C. C. 243
Chicago & N. W. Ry. Co.—Extension ..... 30 M. C. C. 379
Texas & Pac. Motor Transp. Co.—
Extension ..... 30 M. C. C. 465

Illinois Central R. Co.—Extension.....30 M. C. C. 477
Atlantic C. L. R. Co.—Extension.....30 M. C. C. 490
Chicago, R. I. & P. Ry. Co.—Extension.....30 M. C. C. 621
Chicago & N. W. Ry. Co., Common Carrier
Appl .....31 M. C. C. 299
Chicago & N. W. Ry. Co., Extension.....31 M. C. C. 455
Seaboard Air Line Ry. Co.—Extension.....31 M. C. C. 658
Frisco Transp. Co.—Extension.....32 M. C. C. 141
Gulf Transp. Co.—Extension.....32 M. C. C. 762
Penna. Truck Line, Inc., Common Carrier
Appl .....33 M. C. C. 21
Texas & Pac. Motor Transport Co.—
Extension .....33 M. C. C. 38
Unadilla Valley Ry. Co., Common Carrier
Appl .....33 M. C. C. 219
Steinman Extension.....33 M. C. C. 298
Santa Fe Transp. Co., Common Carrier
Appl .....33 M. C. C. 333
Rock Island Motor T. Co.—Extension.....33 M. C. C. 349
Rock Island Motor T. Co.—Extension.....33 M. C. C. 506
Great Northern Ry. Co., Common Carrier
Appl .....33 M. C. C. 593
Darby Common Carrier Appl.....33 M. C. C. 715
Burlington Transp. Co.——Extension.....33 M. C. C. 781
Jacobs Transfer Co.—Extension.....34 M. C. C. 93
Pacific Motor Trucking Co., Common Carrier
Appl .....34 M. C. C. 249
Siebert Extension.....34 M. C. C. 340
Chicago, M., St. P. & P. R. Co.—Extension.....34 M. C. C. 475
Frisco Transp. Co.—Purchase-Reddish.....35 M. C. C. 132
Frisco Transp. Co.—Purchase-Bennett.....35 M. C. C. 802
Rock Island Motor Transit—Purchase.....39 M. C. C. 59
Pacific Motor Trucking Co.—Purchase.....39 M. C. C. 441
McNichols Transfer Co.—Extension.....41 M. C. C. 191
Illinois Central R. Co.—Extension.....41 M. C. C. 211
Missouri Pac. R. Co.—Extension.....41 M. C. C. 241

Penna. Truck Lines, Inc., Common Carrier Appl ..... 41 M. C. C. 607
Texas & Pac. Motor Transp. Co., Common Carrier Appl ..... 41 M. C. C. 721
Flatt Common Carrier Appl ..... 41 M. C. C. 791
Kansas City S. Ry. Co.—Extension ..... 42 M. C. C. 74
Frisco Transportation Co.—Extension ..... 42 M. C. C. 219
Penna. Truck Lines, Inc.—Extension ..... 42 M. C. C. 733
Penna. Truck Lines, Inc.—Extension ..... 42 M. C. C. 759
Rock Island Motor Transp. Co.—Extension ..... 43 M. C. C. 470
Campbell Sixty-six Exp., Inc. v. Frisco Transp. Co. ..... 43 M. C. C. 641
Burlington Transp. Co.—Extension ..... 43 M. C. C. 729
Rock Island Motor Transit Co.—Purchase, M. C. F. 2374 ..... 1-4-45, not yet reported

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF VIRGINIA.

CIVIL ACTION No. 285

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

BRIEF FOR THE UNITED STATES

This is a suit, brought on behalf of affected trucking interests, to set aside orders of the Interstate Commerce Commission granting operating authority as a common carrier of property by motor vehicle to the receivers of the Seaboard Air Line Railway.[1]

The railroad filed some fourteen applications for operating authority as a motor carrier along routes paralleling its rail line. Eight of the applications were filed on the

[1] Legh R. Powell, Jr., and Henry W. Anderson. Applicant will be referred to hereinafter as "Seaboard" or as the "railroad."

same day, February 23, 1937. Another was filed on May 26, 1937, two on August 9, 1937, another on August 30, 1937, and two others on February 21, 1938, and August 15, 1938, respectively. In the aggregate these applications substantially parallel Seaboard's entire rail line, as shown in the map attached to the complaint as Exhibit "A-3." However, the applications were so worded that each of them, individually, covered only territory in one or two states. Consequently, the Commission, pursuant to Section 205(a) of the Interstate Commerce Act (49 U. S. C. A. 305 (a)), referred each application to a Joint Board. Each Joint Board took testimony only with respect to operations within the territory embraced in the particular application referred to it. Plaintiffs and other protestant motor carriers sought to offer evidence regarding the economic effect of the railroad's truck operations over the entire territory which the railroad was planning to serve under the series of applications filed, but such evidence was excluded by the Joint Boards. Timely requests by plaintiffs to consolidate the applications for hearing were denied by the Commission.[2]

After reports had been made by each of the Joint Boards, and exceptions filed thereto, the Commission (Division 5) on July 11, 1939, in its report and order (17 M. C. C. 413) granted the applications, subject to certain conditions.[3] Condition No. (3) was that "Shipments

[2]Plaintiffs point out in their brief (p. 109) that the dates of the hearings before the Joint Boards were held almost simultaneously, with the result that protestants were not able to present their case properly to each of the Joint Boards.

[3]These conditions were:

(1) The service by motor vehicle to be performed by applicants shall be limited to service which is auxiliary to or supplemental of the service of the Seaboard Air Line Railway;

(2) Applicants shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway;

(3) Shipments transported by applicants by motor vehicle shall be limited to those which move under a through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail.

transported by applicants by motor vehicle shall be limited to those which move under a through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail".

Thereafter, upon petition by the railroad, the Commission reconsidered[4] the desirability of imposing the condition requiring prior or subsequent rail haul and decided that that condition should be eliminated from the certificate granted to the railroad, and should be replaced by a so-called "key-point" restriction prohibiting transportation between certain points, or through or to or from more than one of said points.[5]

Subsequently, the Seaboard petitioned for modification of the key points prescribed by the Commission. Thereupon, the Commission consolidated all the applications for hearing.[6] This hearing, however, was limited to the sole question "whether Condition 3 as set forth in the

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(4) Such further specific conditions as we in the future may find it necessary to impose in order to restrict applicants' operations by motor vehicle to service which is auxiliary to or supplemental of the rail service of the Seaboard Air Line Railway.

[4]The conditions applicable to the Seaboard were considered in connection with objections made by other railroads to similar conditions. The Commission's decision dated January 24, 1941, is reported in 28 M. C. C. 5 under the heading "Kansas City Southern Transport Company, Incorporated, Common Carrier Application."

[5]The "key-point" restriction reads:

"No shipments shall be transported by applicants as a common carrier by motor vehicle from Gaston, S. C., to Swansea, North, Denmark, Fairfax, and Garnett, S. C., nor from Garnett to Estill, Fairfax, Denmark, and Gaston, S. C., nor between any of the following points, or through or to or from more than one of said points: Raleigh, Henderson, Hamlet, Aberdeen, Sanford, Apex, Southern Pines, Laurinburg, Maxton, Pembroke, Lumberton, Bladenboro, Wilmington, Monroe, Charlotte, Lincolnton, Shelby, and Ellenboro, N. C., Richmond and Petersburg, Va., Columbia, Cheraw, McBee, Greenwood, and Clinton, S. C., and River Junction, Quincy, Tallahassee, and Monticello, Fla."

[6]It will be noted that the Commission did consolidate the applications for hearing when the railroad desired the conditions to be modified, although the Commission did not consolidate the applications when the motor carriers had requested that they be consolidated for a hearing on their merits with respect to the issue of public convenience and necessity.

prior report, * * * should be modified, and, if so, the extent of such modification.'"[7]

At this hearing the Antitrust Division of the Department of Justice had intervened, and sought to present testimony regarding the effect of Seaboard's motor truck operations upon competitive conditions in the industry. The Department on December 5, 1941, petitioned for reopening of the proceeding in order that such evidence might be heard.[8] On January 21, 1942, the Commission decided that Condition 3 should be modified, as requested by the railroad.[10] Certificates were later issued accordingly, but apparently the railroad has not actually instituted service on all the routes where operating authority was granted.

As required by Section 208 of the Judicial Code (28 U. S. C. A. 46), this suit was brought against the United States, the Interstate Commerce Commission being joined as a defendant. On November 29, 1943, the United States filed its answer, admitting the allegations of the complaint, as amended, and that the relief prayed for should be granted, and that the orders of the Interstate Commerce Commission assailed in the present suit be set aside for mistake of law and failure to afford a full and fair hear-

[7]Commission's orders of July 25, 1941, and October 3, 1941. Exs. "N" and "O" to complaint.

[8]Ex. "P" to complaint. A similar petition was filed the same day by plaintiff American Trucking Associations, Inc. Ex. "Q" to complaint.

denied rehearing.[9] On July 6, 1942, the Commission

[9]Ex. "R" to complaint.

[10]34 M. C. C. 441. As modified, condition 3 reads:

"No shipments shall be transported by applicants as a common carrier by motor vehicle from Richmond to Petersburg, Va., not including shipments moving from Richmond through Petersburg to points between Petersburg and Henderson, N. C., from Monroe to Charlotte, N. C., or from Charlotte to Monroe not including shipments moving from or to Rutherfordton, N. C., or points between Charlotte and Rutherfordton, nor between the following points or to or through or from more than one of said points: Richmond, Va., Henderson, Raleigh, Hamlet, Monroe, and Wilmington, N. C.; Hartsville, Columbia, Garnett, and Greenwood, S. C.; and Jacksonville, Tallahassee and Tampa, Fla."

ing. On or about December 17, 1943, the Interstate Commerce Commission filed its answer in support of the Commission's order; and on January 6, 1944, the Seaboard was granted leave to intervene, and filed its answer in support of the Commission's order

QUESTIONS PRESENTED

1. Should the Commission's orders be set aside by this Court for mistake of law or failure to apply the proper statutory standards?

2. Should the Commission's orders be set aside as arbitrary, or for abuse of discretion, because of failure to afford a full and fair hearing?

ARGUMENT

Under well-settled doctrine as to the scope of judicial review, this Court may set aside an order of the Commission for mistake of law or for failure to apply the proper statutory standards. Interstate Commerce Commission v. Union Pacific Railroad Company, 222 U. S. 541, 547 (1912); United States v. Carolina Freight Carriers Corporation, 315 U. S. 475, 488-490 (1942); Scripps-Howard Radio, Inc., v. Federal Communications Commission, 316 U. S. 4, 10 (1942). Similarly, an order of the Commission may be set aside if it is arbitrary or unreasonable, or by an abuse of discretion results in denial of a fair and full hearing. Interstate Commerce Commission v. Union Pacific Railway Company, 222 U. S. 541, 547 (1912); Atchison, Topeka & Santa Fe Railway Company v. United States, 284 U. S. 248, 262 (1932).

This defendant respectfully submits that:

I. The Commission's orders should be set aside for mistake of law, and

II. The Commission's orders should be set aside as arbitrary and unreasonable, for abuse of discretion in denying a fair and full hearing.

I. THE COMMISSION'S ORDERS SHOULD BE SET ASIDE FOR MISTAKE OF LAW

The antitrust laws, and the policy embodied therein of promoting competition,[11] apply to all forms of transportation, except where specific statutory provisions authorize departure therefrom.[12] United States v. Trans-Missouri Freight Association, 166 U .S. 290 (1897); United States v. Joint Traffic Association, 171 U. S. 505 (1898). In furtherance of its policy of competition in the transportation field, Congress has prohibited the control of one form of transportation by another except under the most limited of conditions. Thus in 1912, Congress announced its policy of preserving the independence of water carriers by including in the Panama Canal Act[13] a provision designed to prevent their domination by railroads. In 1938 a similar proviso was inserted in Section 408(b) of the Civil Aeronautics Act.[14] Likewise, in Section 213(a) of the Motor Carrier Act of 1935, Congress undertook to preserve the motor carrier industry from domination or control by other forms of transportation which "might use the control as a means to strangle, curtail, or hinder progress in highway transportation for the benefit of the other competing transportation".[15]

[11] *Northern Securities Company* v. *United States*, 193 U. S. 197, 337-8 (1904); *United States* v. *Trenton Potteries Company*, 273 U. S. 392, 397 (1927).

[12] Congress has established requirements that certificates of convenience and necessity be obtained, that published rates be adhered to, and that mergers and acquisitions of carriers may be effected on certain terms, requiring approval by a public agency.

[13] 37 Stat. 560, 566. See also H. Rep. No. 423, 62nd Cong., 2nd Sess., p. 12, and 33 I. C. C. 700, 716.

[14] 52 Stat. 973, 1001; 54 Stat. 785; 49 U. S. C. A. 401, 488.

[15] 79 Cong. Rec. 5655, 12205-6. Section 213 of the Motor Carrier Act of 1935 is now included in Section 5 of the Interstate Commerce Act (49 U. S. C. A. 5).

This legislative policy was evolved out of years of experience. Seldom have new forms of transportation been developed by those engaged in operating the older means of transportation. On the contrary, the older transportation agencies have generally resisted the new, and have entered the new field only after its commercial possibilities have been demonstrated and the more progressive form has come to be regarded as a competitive threat to the old. Then the purpose was generally to suppress the new form of transportation in order to protect investments in the more obsolete methods.

As a result of this policy, the Interstate Commerce Act provides that, in a proceeding where the Commission's approval is sought in order to authorize a merger or acquisition of a motor carrier, the Commission is required, in case the party acquiring control of the motor carrier is a railroad, or affiliated with a rail carrier, to exercise a stricter rule than would otherwise be applicable. Section 5(2)(b) of the Act contains a proviso that in such a case, in addition to the usual finding that the proposed transaction "will be consistent with the public interest," the Commission must also find (1) that the transaction will enable such rail carrier "to use service by motor vehicle to public advantage in its operations," and (2) "will not unduly restrain competition."

The Supreme Court has held, in McLean Trucking Company v. United States, 321 U. S. 67, 86-87 (1944), that in a proceeding under Section 5 of the Act, it is the duty of the Commission to consider the effect which a proposed merger will have upon competitive conditions. This being true of an ordinary merger, the rule would apply a fortiori in case of any railroad connection.

This congressional policy requiring strict scrutiny of railroad control of motor carriers, in order to prevent monopolistic conditions or restraints upon competition,

undoubtedly must be given effect by the Commission in cases where the railroad itself seeks to engage in business as a motor carrier by obtaining a certificate of public convenience and necessity under Section 207 of the Act (49 U. S. C. A. 307).

Under federal law, the concept of "public convenience and necessity" clearly embraces the preservation of healthy competitive conditions. Indeed, it has been held that new service may be authorized for the very purpose of providing the public with the benefits of competition. In Chesapeake & Ohio Railway Company v. United States, 283 U. S. 35, 41-43 (1931), the Supreme Court said:

> In the absence of a plain declaration to that effect, it would be unreasonable to hold that Congress did not intend to empower the Commission to authorize construction of new lines to provide for shippers such competing service as it should find to be convenient or necessary in the public interest. (p. 42).

In Davidson Transfer & Storage Company v. United States, 42 F. Supp, 215, 219 (E. D. Pa., 1942), it was likewise held that "one of the weapons in the Commission's arsenal is the right to authorize competition."[16]

Consequently, it is submitted that the Commission's orders are vitiated by mistake of law by reason of the Commission's failure to consider the important public question of the competitive effect of the Seaboard's entry into the motor carrier field.[17] Texas & Pacific Railway

[16]Federal law affords less protection to existing carriers against competition from new operators than is the case under state law in many jurisdictions. *Pennsylvania Railroad Company* v. *United States*, 40 F. (2d) 921, 925 (W. D. Pa., 1930); *Indian Valley Railroad Company* v. *United States*, 52 F. (2d) 485, 487 (N. D. Cal., 1931). *Cf. North Coast Transportation Company* v. *Department of Public Works*, 157 Wash. 79 81 (1930).

[17]It is true in its report of July 11, 1939, the Commission finds that it does not appear "from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers." Ex. "L" to complaint, p. 78. But, obviously, there could be no evidence in "the records made in these cases" when the Commission

Company v. Interstate Commerce Commission, 162 U. S. 197, 217 (1896).

It was also a palpable mistake of law and misapprehension of the proper statutory standards for the Commission to apply a different rule to the Seaboard's application than it would have applied if the applicant had not been a railroad. This point is discussed at length in plaintiffs' brief (p. 41 et seq.) and need not be elaborated here. The language of the statute is plain and unambiguous. It provides[18] that the Commission shall issue a certificate authorizing operation as a motor carrier "if it is found that * * * the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity."

Obviously, this statutory requirement applies equally to all applicants for certificates as a motor carrier. Whether the applicant is a railroad, a railroad subsidiary, or an independent corporation or an individual, is immaterial. Proof of public, not private, convenience and necessity is necessary as a prerequisite to the institution of motor carrier operations, whoever the party may be who proposes to carry on such operations. Mere "railroad convenience" or benefit or advantage to Seaboard in carrying on its business is obviously insufficient compliance with the requirements of law.[19]

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denied to the Antitrust Division and to plaintiffs any opportunity to present evidence regarding the competitive effect of the Seaboard's motor carrier operations. The quoted passage of the Commission's report must therefore be regarded as a finding made without support in the evidence. *Interstate Commerce Commission* v. *Union Pacific Railroad*, 222 U. S. 541, 547 (1912) Chicago Junction case, 264 U. S. 258, 265 (1924); *Interstate Commerce Commission* v. *L. & N. Railroad Company*, 227 U. S. 88, 91-2 (1913).

[18]Section 207(a), 49 U. S. C. A. 307(a).

[19]It is equally clar, as plaintiffs point out in their brief (p. 120), that Congress in the Interstate Commerce Act has established three and only three classes of transportation; rail, motor, and water, respectively. Each of these types of transportation is clearly differentiated from the others, and each is subjected to its own particular statutory

In another respect also, as plaintiffs have pointed out in their brief (p. 59), the Commission seems to have entertained an erroneous conception of the criteria to be applied by it in determining whether public convenience and necessity require motor carrier operations by Seaboard.

It seems clear that the entire "key-point" theory is based directly upon the operating convenience of the railroad, and that the Commission is selecting as key points those which may from time to time be indicated as suitable by the operating practices of the railroad. The Commission seems to take the view that public convenience and necessity requires anything which is beneficial or advantageous to the railroad. Thus in the order of January 24, 1941, the Commission points out that with respect to traffic which can be moved in well-loaded cars on through trains "the railroads have no need to substiute truck service for such rail service."[20]

The Commission apparently took the view that any reduction in the railroad's operating expenses was beneficial to the general public and "required by public convenience and necessity."[21]

That the Commission based its "key-point" conditions upon railroad operating convenience is shown by the following language from the Commission's report:

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scheme of regulation. Each is separately treated by the law, and the requirements imposed upon each type of carrier vary. The mere fact that Seaboard is a rail carrier does not per se authorize it to engage in line haul service as a motor carrier, without fully complying with all the requirements which the law has prescribed for the regulation of motor carriers. Those requirements include not only the provision requiring proof of public convenience and necessity, but also the requirements as to tariffs and accounting. Plaintiffs' brief (pp. 87-88) presents a rather convincing picture of Commission action in accordance with a preconceived notion held by the Commission prior to the enactment of federal legislation regulating motor carrier transportation, rather than in accordance with the scheme actually adopted by Congress and established by existing law.

[20]Ex. "M" to complaint p. 86.

[21]Ex. "M" to complaint, p. 86.

As the above quotations indicate, the thought of division 5 in regard to this matter was that public convenience and necessity required a co-ordinated rail-and-truck service, which, upon the records of the cases before it, could only be furnished efficiently and effectively by conducting the two forms of transportation under a single control, but that there was adequate independent motor-carrier service between all stations, generally speaking, so that public convenience and necessity did not require the institution between the stations of new motor-carrier service under railroad control which is not coordinated with prior or subsequent rail service. Hence condition 3. Upon further consideration, we are of the opinion that the division gave insufficient weight to the fact that the railroad, as well as the independent motor carriers, has been and is furnishing service between the stations, but that between many of them the present means of railroad service, the way-freight train, is uneconomical and inefficient. This is the reason for coordinating truck service with the rail service, and, as we have found (and as division 5 also found), public convenience and necessity require the increased economy and efficiency which will result from such substituted use of trucks. By the same reasoning, however, public convenience and necessity require the substitution of trucks for way-freight train service regardless of whether there is a prior or subsequent movement by rail. Such substitution is a part of the plan of coordination, and unless it can be accomplished, the full benefits in increased economy and efficiency which the public interest demands cannot be secured."[22]

It is obvious from the foregoing reasoning that Commission, in abandoning the prior or subsequent rail haul condition prescribed by Division 5, is abandoning also any justification for authorizing the railroad's truck operations because they constitute an element of a coordinated rail and truck service, of a different character from that performed generally either by rail or motor carriers. The

[22]Ex. "M" to complaint, pp. 87-88.

substitution of pure motor carrier service, differing from the "adequate independent motor carrier service" already existing only in its being under railroad control, is obviously not the establishment of a new and different type of service beneficial to the public.

So far as the public is concerned, it will receive from the railroad, acting as a motor carrier, only he same type of all motor service which it would otherwise receive from the independent motor carriers not controlled by the railroad. The only justification for such service is that it is less costly to the railroad; and if it be assumed that the railroad is under obligation to continue to transport traffic between the stations in question, it would then conceivably be of indirect benefit to the public to permit the railroad to adopt the cheaper method, since the railroad rates will always be increased to such extent as is necessary to afford what is regarded a reasonable rate of return on the capital invested in the railroad business. But the fallacy of this assumption is that it is not necessarily true that the railroad is obliged to remain in business, if available traffic is not sufficient to afford revenues greater than operating expenses. *Brooks-Scanlon Co.* v. *R. R. Comm. of Louisiana*, 251 U. S. 396 (1920).

If the inherent advantages of motor transportation in particlar instances are such that it should be utilized in preference to rail transportation, the logical consequence would seem to be that such traffic should go to motor carriers and not to rail carriers, rather than that rail carriers should seek to transform themselves into motor carriers in order to continue to handle traffic which can no longer be economically or efficiently handled by them as rail carriers.[23]

[23]The Commission contends: "That in all of these cases the railroad has been and is transporting the traffic in question between its stations and is under obligation to continue to do so. What it is seeking is not to enter a new field of service but to substitute a more efficient for a less efficient means of service. In both its direct and indirect effect such

Regarding "key-points" the Commission goes on to say:

> It does not follow, however, that public convenience and necessity require in these cases a grant of operating authority to provide motor-carrier service between all the stations. There are certain larger points on the lines of the respective railroads here involved between which through freight trains are operated. Such trains include package or merchandise cars which are set out at the principal points, commonly referred to as key or break-bulk points.
>
> * * *
>
> Applicants admit that rail service by through trains is economical and efficient for these longer hauls and that the operation of through package or merchandise cars transporting less-than-carload freight between key points will be maintained. In the circumstances, there is no need of substituting truck service, and public convenience and necessity do not require the establishment between such points of truck service under railroad control. An appropriate condition will therefore be imposed prohibiting the transportation of shipments by motor vehicle between key points. It is noted that in some instances through train service is maintained between key points, whereas in others such service is maintained in only one direction, or the key points served in one direction may differ from those served in the opposite direction. Our findings will take account of such circumstances.
>
> * * *
>
> Some difficulties have been encountered, however, in determining which points are actually the key points in all instances in view of the limited record with

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substitution is in the public interest." Ex. "M" to complaint, p. 88.

This is obviously unsound reasoning. Even assuming that a rail carrier is under obligation to continue to offer rail service between certain stations, even at a loss, it does not follow that it is under any obligation to furnish motor carrier service between those points. When a railroad establishes motor carrier service, pure and simple, it is undoubtedly entering "a new field of service." Perhaps the railroad "has been * * * transporting the traffic in question" between such stations, but it has no legal right to continue to do so if the public prefers to use some other mode of transportation which is more efficient or economical.

respect thereto. We recognize also that these points may change from time to time. Consequently, applicants may file appropriate petitions requesting us to amend the order herein so as to reflect any changes in the location of such points. Our attention may also be directed to any key points which may have been omitted. In the event any present modification is required in the designation of the key points, it should be brought to our attention by appropriate petitions filed within 30 days after the service of this report. We should also be advised by appropriate petitions of any changes in key points which may occur in the future. Such petitions should set forth fully the facts relative to the necessity for any such change.[24]

It seems plain that the "restrictions" to be imposed by the Commission, under the quoted language, are based entirely upon what the railroad wishes to do. "Key points" are apparently to be defined only as being points between which the operation of freight trains by the railroad "will be maintained." In circumstances where the railroad decides to continue operating as a railroad, "there is no need of substituting truck service." Consequently, in such circumstances, the Commission concludes that "public convenience and necessity do not require the establishment between such points of truck service under railroad control." This amounts merely to saying that if the railroad wishes to run trains, it does not need to run trucks instead, and consequently "public convenience and necessity" do not require that the railroad run trucks.

When "public convenience and necessity" is thus treated as an automatic consequence of what a railroad does, it would seem to follow inescapably that the Commission has in truth adopted "railroad convenience" as its standard of judgment, and departed from the criterion of public convenience and necessity prescribed by the applicable statute.

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[24] Ex. "M" to complaint, pp. 88-89.

The dependence of the Commission's decision upon the current practice of the railroad is further shown by the fact that if the railroad is maintaining train service between "key points" served in one direction differ from those served in the opposite direction, the Commission obligingly annuounces that "our findings will take account of such circumstances." The Commission also recognizes that "these points may change from time to time."

In other words, whenever and wherever the railroad discontinues its rail service, the Commission recognizes the "need of substituting truck service" and will authorize it as being required by "public convenience and necessity." In adopting a rule such as this, the Commission undoubtedly misapplied the standards prescribed by statute, and fell into a patent mistake of law.

II. THE COMMISSION'S ORDERS SHOULD BE SET ASIDE AS ARBITRARY AND UNREASONABLE, FOR ABUSE OF DISCRETION IN DENYING A FAIR AND FULL HEARING

The effect of the procedure followed by the Commission was to deprive plaintiffs and other motor carrier protestants, as well as the Antitrust Division of the Department of Justice, of any opportunity to offer evidence with respect to the important public question of the effect on competitive conditions of Seaboard's entry into the motor carrier field to the extent contemplated by the fourteen applications filed by the railroad.[25] Likewise, the plaintiffs and other motor carrier protestants were prevented from introducing evidence with regard to the matters set forth in paragraph 8 and 11 of the complaint. In view of the Commission's refusal to consolidate the applications and

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[25]See the Department's petition. Ex. "B" to complaint.

to hear evidence with respect to the foregoing pertinent matters, it is plain that the Commission did not accord the parties a fair hearing and that its order is vitiated by an abuse of discretion amounting to arbitrary and unreasonable action.

Very logically and naturally each of the Joint Boards to which the individual applications were referred excluded evidence going beyond the operations covered by the particular application referred to such Joint Boards. The Commission refused to consolidate the applications for hearing. At no subsequent time was there any opportunity afforded for the presentation of evidence on the vital and essential isues mentioned above. The Commission in its report of July 11, 1939, dealt in a single report with the recommendations made by the various Joint Boards with respect to all the applications; but this action of the Commission was based upon the separate records developed before the Joint Boards with respect to the individual applications, and as has been seen, the Joint Boards declined to receive evidence regarding the effect on competitive conditions of the Seaboard's motor carrier operations as a whole. The subsequent order of the Commission on January 24, 1941, which substituted the so-called "key point" restriction for the prior and subsequent rail-haul restriction, was made without hearing and additional evidence, and was based upon the same records which had previously been developed before the Joint Boards.

When the railroad was not satisfied with the "key point" restrictions, and requested their modification, the Commission did consolidate the several applications for hearing; but this hearing was limited to the question of determining the appropriate "key points." Thus, even after the applications had been consolidated for hearing, plaintiffs and protestant motor carriers and the Antitrust Divi-

sion of the Department of Justice were denied any opportunity to offer evidence on the important question vital to the proper determination of the case. Evidence could not be offered on the basic issue of public convenience and necessity, as to whether there was any need at all for Seaboard's motor carrier service. Likewise, there was no opportunity to presnt evidence regarding the propriety of substituting the so-called "key point" restrictions for the prior and subsequent rail-haul restriction. The only matter with respect to which the Commission was willing to permit evidence to be offered was the question whether the key points named in its order of January 24, 1941, should be modified by substituting in lieu thereof the points which were enumerated in the Commission's report of July 6, 1942.

Obviously, such a partial hearing was not sufficient.[26] The parties are entitled to a full and fair hearing on every phase of the case, which is an essential part of the determination which the Commission must make in order to perform its statutory function.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the orders of the Interstate Commerce Commission which are assailed in the case at bar are based upon a mistaken view of the law and upon misapprehension of the proper statutory standards, and that the said orders are arbitrary and unreasonable by reason of the Commission's abuse of discretion in denying to the parties a full and fair hearing and an opportunity to present evidence upon important issues essential to correct decision of the questions pending before the Commission. Consequently, the

[26]The limited hearing held by the Commission would be analogous to permitting a person accused of murder to be heard with respect to the choice of modes of execution, but not to be heard on the question of guilt or innocense.

said orders should be set aside, and the relief prayed for by plaintiffs be granted by this Court.

Respectfully submitted,
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DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF VIRGINIA.

CIVIL ACTION No. 285

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, DEFENDANTS

REPLY BRIEF FOR THE UNITED STATES

It was admitted by counsel for Seaboard at the oral argument on June 1, 1944, in response to questions from the Court, that in a proceeding under Section 207 of the Interstate Commerce Act[1] the Interstate Commerce Commission should deny a certificate of public convenience and necessity if the facts indicated a violation of the antitrust laws. In the light of this admission that the Commission should consider the effect upon competitive conditions of

[1] 49 U. S. C. A. 307.

Seaboard's entry into the motor carrier field,[2] the questions remaining[3] for decision by the Court are whether or not the Commission did, in its action upon Seaboard's applications, comply with this admitted obligation.

It is submitted that examination of the Commission's reports discloses that the Commission did not discharge that duty. Arguments that the Commission did give due consideration to this important issue are manifestly without adequate foundation; for it is readily apparent that the Commission did not make the necessary findings essential to support such a contention, and did not have before it a record upon which it could have made such findings.

The Commission's brief does not question "the Commission's power in appropriate cases to treat multiple applications as being in substance a single application," but argues that under the doctrine of "administrative finality" this Court is not permitted to determine independently whether Seaboard's applications constitute a single application covering an integrated operation, "but must

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[2]The correctness of this view is clearly sustained by the authorities cited on p. 9 of the brief for the United States, particularly *Chesapeake and Ohio Railway Co.* v. *United States*, 283 U. S. 35 (1931). This conclusion is fortified by consideration of the provisions of Sections 5 (2)(b) and 202(c) of the Act. (49 U. S. C. A. 5(2)(b); 49 U. S. C. A. 302(c)). Moreover, as the Court pointed out during oral argument, the Commission in many cases has in fact considered the question of competition and monopoly. See, for example, *Virginia Stage Lines* v. *United States*, 48 F. Supp. 79, 81 (W. D. Va. 1942); *Sante Fe Trail Stages, Inc. Common Carrier Application*, 21 M. C. C. 725, 748.

[3]Regarding the question of alleged violations of tariff and accounting requirements, where no remedy may be had in the present proceeding, nothing need be said. Similarly no reply is necessary to Seaboard's argument regarding the position of the Department of Justice. Seaboard's brief, pp. 44-60. It is plain that by statutory requirment the United States is an indispensable party. 28 U. S. C. A. 46. It is likewise obvious, under elementary principles of pleading, as well as the specific provisions of Rule 8(b) of the Federal Rules of Civil Procedure, that a party has an option whether to "admit or deny the averments" of the complaint. Rule 11 requires a conscientious belief by the attorney signing the pleading that there is good ground to support it. Moreover, an attorney representing the United States is under a peculiar obligation to act with due regard to the rights of all parties concerned, and to acquiesce in just claims as readily as to resist unfounded ones. See *Viereck* v. *United States*, 318 U. S. 236, 248 (1943).

accept the Commission's determination on that score if there be substantial warrant in the record.'"[4]

The weakness of this argument is that, in fact, the Commission made no "determination on that score." No findings were made with respect to the propriety of Seaboard's failure to incorporate all the routes requested in a single application. The only language actually appearing in the Commission's report seems to substantiate plaintiffs' contention that an integrated plan was contemplated. It was there said:

> It is true, as protestants point out, that a possible result of granting the applications included in the title proceeding, and Sub. Numbers 1 to 8, which include routes between Richmond and Columbia, would be a unified service in three States, and that applicants may have intended such result when the several applications were filed.[5]

The Commission does go on to say that "we now have the entire situation presented by the several applications before us in all of its aspects, following full and complete hearings";[6] but the "full and complete hearings" of which the Commission there speaks are the very same hearings where the Joint Boards refused to receive evidence relating to service over routes other than the particular ones embraced in the applications before such Joint Boards.

As the Court indicated at the oral argument, judicial notice may be taken of the fact that nothing plus nothing plus nothing still equals nothing.

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[4]Commission brief, pp. 24-25. Similar contention is made in Seaboard's brief, pp. 21-22, 29, although it is admitted that no findings to that effect were "explicitly spelled out." The Commission's brief, p. 26, similarly bases its argument upon "the substance and effect" of the Commission's action, rather than upon any expressly formulated findings.

[5]Report of July 11, 1939. Ex. "L" to complaint, p. 60.

[6]Ex. "L" to complaint, p. 61.

It cannot be denied that, as the result of the procedure followed by the Commission in acting upon Seaboard's applications, there never was any opportuntiy for evidence to be presented regarding the issue of undue restraint of competition.[7]

Furthermore, it is submitted that such evidence would be obviously pertinent and essential even if it were true that the Commission had made findings to the effect that Seabaord intended each application to cover a separate and isolated operation. The aggregate effect of such separate operations, when substantially paralleling the entire extent of Seaboard's rail line, might well have the effect of restraining competition; just as the effect of a chain of grocery stores upon independent shopkeepers might be serious, although each of the chain stores individually might be no greater in size than the independent competitor located in its neighborhood. Consequently, even if the Commission had found that Seaboard was acting without any "fraud" with respect to the scope of

[7]The issue of undue restraint of competition was not involved in *Parker* v. *United States* (S. D. Indiana, Indianapolis Division, Civ. No. 781), a pending and undecided case to which reference was made by Commission counsel during oral argument. Nor was the question as to denial of a fair hearing involved. Nor did the Commission fail to make explicit findings. In that case there was a single application, and protestant motor carriers were fully heard. They insisted that an applicant under Section 207 must prove absolute "necessity" for the proposed service (cf. *Petersburg Etc. Ry. Co.* v. *Commonwealth*, 152 Va. 193, 203-206 (1929)), and asserted a more extensive privilege to be free from the competition of new operators than established carriers are entitled to claim under federal law. (Although in many jurisdictions, including Virginia, state regulatory statutes contain provisions of the sort which the protestants in the *Parker* case sought to read into the federal law. See the authorities cited in Brief for the United States, p. 9, footnote 16; and *Southside Transportation Co.* v. *Commonwealth*, 157 Va. 699, 704-705 (1932); Acts of Assembly, March 25, 1930, sec. 3, March 9, 1936, sec. 6(c); Michie's Code 1942, secs. 4097(o), 4097y(6)(c). See also *Central Ohio Transit Co.* v. *Public Utilities Comm.*, 115 Ohio St. 383, 391-3 (1926).) In the *Parker* case, the Government considered it important to controvert these contentions. Hence it stressed and amplified in its brief the discussion relating to the proper construction of Section 207 with regard to these points; but its position there with respect to the statutory standards prescribed by Section 207 was otherwise in all respects exactly the same as in the case at bar, and was expressed in language almost identical with that contained in its brief in the case at bar.

its several applications, it was undoubtedly the duty of the Commission to receive the evidence regarding the economic effect upon competitive conditions of Seaboard's entry into the motor carrier field. But no opportuntiy was ever given for such evidence to be heard.

Seaboard seeks support for its position in the Commission's findings with respect to restraint of competition contained in the report of July 6, 1942.[8] That report was made after the hearing held on November 12 and 13, 1941, which hearing was limited to the question of *modification of "key points."*[9] Consequently, that finding simply determined that *"the modifications requested"* as to "key points" would not result in undue restraint upon competitive conditions.

The Commission did not decide, nor did it have available a record upon which it could determine, whether the substitution of the "key-point" condition for the prior or subsequent rail-haul condition would result in consequences contrary to the antitrust laws, or whether such consequences should have precluded a finding of public convenience and necessity when the Commision passed upon Seaboard's applications in the first instance. This is expressly shown by the language used by the Commission:

> *The modifications requested* will in no way change the character of the service applicants are authorized to perform as a motor carrier; nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor-carrier field.[10]

Obviously, if the Commission had made a broader finding, without the benefit of evidence on the subject, it

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[8]Ex. "S" to complaint, p. 123; Seaboard's brief, p. 69.

[9]See brief for the United States, p. 4.

[10]Ex. "S" to complaint, p. 123. [Italics supplied.]

would be the duty of this Court to set aside any order based upon such a finding.[11]

The argument that Seaboard's service by motor vehicle is not competitive with that of independent motor carriers, but is a peculiar type of special service having the characteristics neither of rail service alone nor of motor vehicle service alone,[12] is likewise not warranted by anything contained in the findings made by the full Commission. Such an argument might perhaps have been advanced with some justification if the findings made by Division 5[13] had been accepted by the full Commission. Combined rail-and-truck service might perhaps reasonably be regarded as a type of through service, not identical with the all-motor service performed by independent motor carriers generally. Division 5 regarded such combined rail-and-truck service as beneficial to the public, but stated that there was no need for any additional motor carrier service *simpliciter*. Division 5 expressly found that "the only need shown of record is for service which is strictly supplemental of, or auxiliary to, and coordinated with applicants' rail service."[14] Hence Condition 3 was imposed, requiring prior or subsequent rail haul.

The full Commission, however, without hearing any additional evidence, differed with Division 5.[15] It authorized "substituted" service, and not merely "auxiliary" or "supplemental" service coordinated with Seaboard's rail service.

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[11] *Chicago Junction* case, 264 U. S. 258, 265 (1924). As was said by Commissioner Eastman on the occasion of his last public appearance, on February 17, 1944:

"The courts were at one time much too prone to substitute their own judgment on the facts for the judgment of administrative tribunals. They are now in danger of going too far in the other direction. The principle that it is an error of law to render a decision not supported by substantial evidence is a salutary principle. The courts should enforce it."

[12] Commission brief, pp. 30-32; Seaboard's brief, p. 35.

[13] Report of July 11, 1939. Ex. "L" to complaint, pp. 77-79.

[14] Ex. "L" to complaint, p. 79.

[15] Report of January 24, 1941. Ex. "M," pp. 87-88. Quoted in brief for the United States, pp. 12-13.

In departing from the reasoning of Division 5, and in abandoning the prior or subsequent rail-haul condition, the full Commission plainly fell into error of law, and for the statutory standard of "public convenience and necessity" substituted the test of railroad convenience and operating economy.

Division 5 found that there was adequate independent motor-carrier service between all stations, so that public convenience and necessity did not require institution of new motor-carrier service, under railroad control, which is not coordinated with prior or subsequent rail service. The full Commission held, however, that the reason for coordinating truck service with rail service was not in order to make available to the public a new type of service, but that the reason for such coordination was to be found in the fact that rail service was uneconomical and inefficient. The full Commission then concluded that this same reason was applicable to service between stations, regardless of whether there is a prior or subsequent movement by rail.

As authority for its holding that reduction in the cost of rail service constitutes sufficient proof of "public convenience and necessity," the full Commission cited *Texas* v. *United States*, 292 U. S. 522 (1934), and *New York Central Securities Corp.* v. *United States*, 287 U. S. 12 (1932). These are, likewise, the only cases cited in the Commission's brief (p. 32) in support of the proposition that reduction in cost justified substitution of trucks for train service.

It is submitted that these decisions are not pertinent, and do not warrant the action taken by the full Commission in disregard of the findings made by Division 5.

Both of those cases were decided *prior to the enactment of federal regulation of motor carriers* in 1935. Both of them dealt with merger *proceedings under Section 5* of the Interstate Commerce Act, as amended by the Trans-

portation Act of 1920. Both of them related to *rail* mergers, and did not deal in any respect with transportation by motor vehicle. Neither of these cases involved determination of "public convenience and necessity"; the standard applicable under Section 5 being whether the transactions proposed were consistent with the "public interest."[16]

In the *Texas* case the Commission approved the acquisition of control of one railroad by another under a lease permitting the lessee to abandon certain general offices and shops of the lessor, which under Texas law were required to be maintained within the state of Texas. The Court held that under the Transportation Act of 1920, the avoidance of waste was a direct concern of the public, and that the Commission was empowered to relieve interstate carriers from burdensome outlays, even though such burdensome expenditures were required under the terms of state statute.[17]

It seems plain that considerations of economy might well warrant a finding that a railroad merger is consistent with the public interest. Such an improvement in the financial position of a carrier furnishing rail service might well be regarded as beneficial to the public served by such carrier. Improvement in rail service by adoption of electrification or use of Diesel power might also reasonably by deemed beneficial to the public using such service. Indeed, the improvement of rail service by the use of any unregulated instrumentality (such as trucks were prior to 1935) might be similarly viewed.

But when the use of trucks became subject to regulation in 1935, it was no longer permissible for a rail carrier, any

[16]The difference between a Section 5 proceeding and a Section 207 proceeding is recognized in the Commission's brief, pp. 37-40; yet the Commission is unable to cite any authority other than these two rail merger cases under Section 5, which arose prior to 1935, in support of the proposition that economy of operation is to be regarded as proof of public convenience and necessity. See also plaintiffs' brief, pp. 80-81.

[17]292 U. S. at 530-531.

more than any other person, to make use of motor vehicle service without complying with the provisions prescribed by statute regarding such motor operations on the highway. Those statutory requirements included the test of "public convenience and necessity." This test plainly related to the transportation requirements of those members of the public who utilized motor service, rather than the requirements of those members of the public who utilized rail service. No longer was it possible to justify, on the ground that it benefited the patrons of railroads by reducing the operating expenses of rail carriers, a motor vehicle operation which did not fully comply in all respects with the requirements established by law for the regulation of transportation by motor vehicles.

It is submitted that the two cases relied on by the Commission do not warrant the conclusion that truck service may be authorized merely because rail service is uneconomical and expensive.

It is submitted that the Commission's order should be set aside for mistake of law and failure to apply the appropriate statutory standards, as well as for abuse of discretion and failure to afford a full and fair hearing where evidence could be offered with respect to the essential issue of the economic effect upon competitive conditions of Seaboard's entry into the motor-carrier field.

Respectfully submitted.

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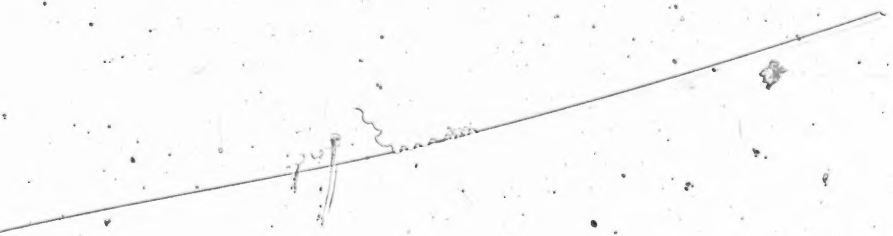

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 558.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
Appellants,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION.

Appeal from the District Court of the United States
for the Eastern District of Virginia.

BRIEF ON BEHALF OF LEIGH R. POWELL, JR. AND HENRY W. ANDERSON, RECEIVERS OF THE PROPERTIES OF SEABOARD AIR LINE RAILWAY COMPANY.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 558.

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
Appellants,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION.

Appeal from the District Court of the United States
for the Eastern District of Virginia.

BRIEF ON BEHALF OF LEGH R. POWELL, JR. AND HENRY W. ANDERSON, RECEIVERS OF THE PROPERTIES OF SEABOARD AIR LINE RAILWAY COMPANY.

I.

OPINIONS BELOW.

The majority and dissenting opinions of the three-judge statutory court from which this appeal is taken are reported in 56 Federal Supplement 394, and are included in the printed record at pages 205 to 221. The challenged orders of the Commission are reported in

17 M. C. C. 413, 28 M. C. C. 5, and 34 M. C. C. 441, and are printed in the record at pages 81, 109 and 151, respectively.

II.

JURISDICTIONAL STATEMENT.

Appellants invoke the jurisdiction of this court to review, pursuant to U. S. C. A., Title 28, Section 47a, the final judgment of the three-judge statutory court below dismissing a suit brought under U. S. C. A., Title 28, Section 41(28) to vacate and set aside orders of the Interstate Commerce Commission granting the Receivers of Seaboard Air Line Railway Company, Intervening Defendants below and Appellees here, certificates of public convenience and necessity authorizing operations as a common carrier by motor vehicle.

III.

STATEMENT OF THE CASE.

This suit, brought pursuant to the statutes controlling such cases (U. S. C. A., Title 28, Secs. 41(28), 44, 45, 45a, 46, 47 and 48), seeks to vacate and set aside orders of the Interstate Commerce Commission granting to Legh R. Powell, Jr. and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, hereinafter referred to as the Receivers, certificates of public convenience and necessity authorizing them to engage in interstate operation as a motor carrier over fourteen different routes in the States of Virginia, North Carolina, South Carolina and

Florida. The plaintiffs below, appellants here, are American Trucking Associations, Inc., an organization formed in the interest of the highway trucking industry throughout the country, and six motor carriers operating in the territories served by the routes authorized by the challenged orders. The Receivers by intervention (U. S. C. A., Title 28, Section 45a) joined the Interstate Commerce Commission as a defendant (R. 178). The United States, as statutory defendant, confessed error and joined in the prayer of the petition (R. 172).

A clear and comprehensive statement of the issues involved requires a chronological recital of the numerout proceedings before the Commission through which the Receivers' motor carrier operating rights were obtained.

Pursuant to the requirements of Section 206 of Part II of the Interstate Commerce Act (U. S. C. A., Title 49, Sec. 306) applications for certificates were filed with the Commission at various times ranging from February 23, 1937, to August 15, 1938. In due course the Commission referred each application to a Joint Board composed of one member from each state in which the proposed operation was located (U. S. C. A., Title 49, Sec. 305(a)). At the hearings before the Joint Boards a number of motor carriers appeared as protestants, and on their behalf the Southern Motor Carriers Rate Conference, an industry organization not a party to this suit, filed motions, later followed by formal petitions to the Commission, asserting that the operations proposed in the several applications contemplated through service traversing three states, and, in conjunction with the Receivers' rail operations, involved six states, and

that the Joint Board to which the several applications had been referred were illegally constituted, and prayed that the hearings and consideration of the applications be stayed and that all of the proceedings be consolidated and referred to differently constituted Joint Boards or to an Examiner (R. 44, 45, 48). The motions and petitions were denied by the Joint Boards (R. 37) and the Commission (R. 52), the hearings were completed, and recommended reports and orders were issued by the Joint Boards.* Thereupon, by reports and orders dated July 11, 1939, (17 M. C. C. 413, R. 81), and February 17, 1940 (21 M. C. C. 773), the Commission granted the authority for all routes here involved, and thereafter formal certificates dated September 30, 1939, and April 4, 1940, were issued.

The authorities thus granted, however, were not unrestricted. The Receivers' applications had stated that the proposed operations were to be utilized for the purpose of rendering "a coordinated rail and highway service between points located on the railroads involved" and would, if authorized, "reduce the cost of rail operations to the extent that it is now necessary to operate trains for the handling of small quantities of less-than-carload freight" (R. 29). Finding that the service should be limited to that "which is strictly supplemental of, or auxiliary to, and coordinated with applicants' rail service," the Commission granted the authority subject to restrictions that limited the service by motor vehicle to that which is auxiliary to or supplemental of the Receivers' rail operations, prohibited service to any point not on their rail lines, and, as Condition 3, proscribed the transportation by motor vehicle of

*One such recommended report and order is set out as Exhibit K to the Complaint, R. 65.

any shipments which did not receive a prior or subsequent movement by rail (17 M. C. C. 413, 433, R. 81, 105).

Experience soon demonstrated that to a substantial degree the benefits anticipated by the Receivers from the auxiliary highway service were defeated by the prior or subsequent rail-haul restriction. They thereupon petitioned the Commission for rehearing and reconsideration. The proceedings, however, were reopened only for oral argument, following which the Commission issued its report and order dated January 24, 1941, in *Kansas City Southern Transport Co. Common Carrier Application*, 28 M. C. C. 5 (R. 109).* Reaffirming its previous findings that public convenience and necessity required the coordinated type of service rendered by the Receivers, and rejecting numerous objections interposed by the protesting parties, the Commission found that the prior or subsequent rail-haul restriction deprived the public of the full benefit which its interest demanded, and accordingly eliminated this condition from the certificates previously issued (R. 116). Also finding that freight trains carrying package cars of less-than-carload freight were operated in through movement between principal stations, and that truck operation in lieu of this service was not needed (R. 117), the Commission designated these stations as key points and prohibited the use of Receivers' motor vehicles for the transportation of less-than-carload shipments to, from or through more than one key point (28 M. C. C. 5, R. 109, 135). The prior or subsequent rail-haul restriction was thus replaced by the so-called key station plan for limiting

*This decision also included the Commission's report on similar petitions filed by other railroad controlled applicants.

the scope of highway service performed by the Receivers to that which was supplemental of or auxiliary to their rail operations.

As previously stated, the Receivers, in seeking relief from the rail-haul restriction, had requested that a further hearing be held for the reception of evidence, lacking in the records of the original hearings before the Joint Boards, which would enable the Commission to determine what conditions might be imposed without unduly impairing the efficacy of the coordinated service. The Commission having considered this request on oral argument only, and without the benefit of evidence essential to a proper determination of the questions presented, its selection of key stations for the Receivers' truck routes was not suitable to attain the desired purpose. Anticipating this possibility, the Commission had invited further petitions seeking changes in the locations of the key points as designated in its report and order of January 24, 1941 (28 M. C. C. 5, 11, R. 109, 118). Responding to this invitation the Receivers promptly sought a rehearing, and by order dated July 25, 1941 (R. 135), the Commission granted the request. In so doing, however, it assigned the proceedings for further hearing "solely to determine whether Condition 3 as set forth in the prior report, 28 M. C. C. 5, should be modified and, if so, the extent of such modification." (R. 136).

At this juncture the Antitrust Division of the Department of Justice, which had displayed no interest in earlier stages of the proceedings, intervened, and the appellant American Trucking Association, Inc., likewise made its first appearance, representing, *inter alia*, however, motor carriers which had been parties to

the proceedings from their inception. The grounds upon which the Antitrust Division sought to participate were stated in its petition as follows (R. 16):

> "This Division is advised that railroad companies seek through ownership and direct operation of truck lines and through operation jointly between railroads of the Railway Express Agency, to bring about a monopoly and strangulation of the independent trucking industry. This, it is contended, will result if railroads are permitted to enter the motor carrier field without restriction because the large resources of the railroads, including railroad stations, employes, soliciting forces, and their ability to cut rates and absorb losses, would give independent motor carriers little chance to survive."

Following an exhaustive hearing, and the denial of petitions by the American Trucking Associations and the Antitrust Division for a further hearing (R. 137, 142, 151), the Commission issued a report and order dated July 6, 1942, in which the various objections of the intervening protestants were fully discussed and rejected, and the key station restrictions previously imposed upon the Receivers' operation by the order of January 24, 1941, were substantially modified (34 M. C. C. 441, R. 151). This order which, together with the certificates issued pursuant thereto, is here under attack is limited by Condition 3, reading as follows (R. 159):

> "No shipments shall be transported by applicants as a common carrier by motor vehicle from Richmond to Petersburg, Va., not including shipments moving from Richmond through

Petersburg to points between Petersburg and Henderson, N. C., from Monroe to Charlotte, N. C., or from Charlotte to Monroe, not including shipments moving from or to Rutherfordton, N. C., or points between Charlotte and Rutherfordton, nor between the following points or to or through or from more than one of said points: Richmond, Va., Henderson, Raleigh, Hamlet, Monroe, and Wilmington, N. C.; Hartsville, Columbia, Garnett, and Greenwood, S. C.; and Jacksonville, Tallahassee and Tampa, Fla."

This suit was filed in the District Court of the United States for the Eastern District of Virginia on October 26, 1943. The Commission, which had been made a party defendant, and the Receivers who had been allowed to intervene as defendants (R. 178), filed answers opposing the complaint (R. 173, 179). The United States being a necessary party defendant (28 U. S. C. A., Sec. 46), the Department of Justice filed its answer confessing error and praying that the relief prayed for be granted (R. 172). Pursuant to U. S. C. A., Title 28, Sec. 47, a court of three judges was convened. On June 1, 1944, a hearing was held at which the appellants submitted the record of the proceedings before the Interstate Commerce Commission and the Receivers introduced evidence in support of their contention that the complaint should be dismissed by reason of the appellants' laches (R. 197). The court, in an opinion filed July 17, 1944, with one judge dissenting, and by judgment entered July 21, 1944, dismissed the complaint (R. 205, 216, 221).

Thereupon this appeal was taken by the plaintiffs below. The Department of Justice, which, as previously stated, had confessed error in the District

Court and thus aligned itself with the plaintiffs, has not joined in the appeal.

A proper understanding of the nature and purpose of, and the limitations upon, the highway operations involved is of the utmost importance. These operations are designed and function exclusively to supplement and improve the service of the railroad by substituting the use of trucks for so-called "peddler" rail cars in the distribution and collection of less-than-carload traffic at small stations intermediate between more important points to and from which the freight is transported in through movement by rail (R. 296, 565-8).* The volume of the local traffic is insufficient to warrant frequent train service to the intermediate points, and thus this class of traffic is often subject to delays, prejudicial to both shippers and the carrier, which cannot be eliminated by the addition of trains except at expense out of all proportion to the traffic handled (R. 390, 584).

The substituted truck service plan corrects these conditions at a minimum of cost and with a maximum of efficiency. Rail transportation continues to be utilized for the transportation to and from the principal stations. The less-than-carload shipments are transferred between cars and trucks at these stations and are not dependent upon the slow and infrequent service of local trains for movement from or to their origin or destination (R. 565-6).

The record is replete with uncontroverted evidence of the benefits derived by both shippers and the

*This and the following references to evidence descriptive of the nature and purpose of the truck service are typical of similar testimony in the record of each of the proceedings before the Commission.

carrier from this coordinated service. Deliveries of less-than-carload shipments are expedited by as much as thirty-six hours (R. 431). The schedules of local trains which continue to carry carload traffic are advanced by relieving them of the handling of the less-than-carload traffic, thus improving the service to the shippers and receivers of carload traffic (R. 579-82). Trains stops are eliminated, effecting fuel economies (R. 579) and reducing delays to through movements by improving connections with other trains (R. 582).

These and other advantages result from a service which is in every sense auxiliary to the Receivers' rail transportation. No new territory is invaded because the routes traversed parallel the rail lines throughout and only rail stations are served. The traffic handled is that which is offered to the railroad and moves at rail rates on rail bills of lading (Stipulation No. 2, R. 190). Indeed, except in rare instances, the shipper does not know whether the original or final movement is by rail or highway.* He simply looks to the railroad for handling his shipment in whichever manner provides the best service.

From this description of the truck operations here involved it is manifest that they are similar in every respect to the type of service which was considered by this Court in *Thomson* v. *United States*, 321 U. S. 19, 88 L. Ed. 326, 64 Sup. Ct. Rep. 392, and there characterized as "merely a new method of carrying on part of its [the railroad's] all-rail freight business in which it has been engaged for many years," and as having "none

*The tariff under which the highway service is provided permits the railroad to use either rail or trucks unless the shipper directs that the substituted highway service shall not be employed.

of the elements of an independent service offered on behalf of motor vehicle operators."

The Receivers' motor carrier routes, including not only those involved in this suit but others also authorized in certificates issued by the Commission, are shown on the map attached as Appendix A, on which are also shown the key stations designated by the Commission's order of July 6, 1942.

IV.

SUMMARY OF ARGUMENT.

1. The attack upon the validity of the orders of the Commission on the ground that the Joint Boards were improperly composed cannot be sustained for the following reasons:

(a) The appellants' contention that the composition of the Joint Boards does not conform to the requirements of Section 205(a) of the Motor Carrier Act rests wholly upon the assumption that it was the purpose of the Receivers to unify certain of their motor carrier operations into a continuous service involving three or more states. The record squarely contradicts this factual premise.

(b) Even though this were not the case, and there were variance between the proposals embodied in the applications and the proof of the scope of the service intended, to hold the Commission's orders void for that reason would run counter to the plain meaning of the language of the statute and surround the Commission's administration of the Motor Carrier Act with intolerable uncertainty, confusion and delay.

Moreover in the absence of fraud or deception, of which there is no scintilla of evidence, if Joint Boards have been properly constituted on the basis of the scope of the operation proposed by the application, the subsequent proceedings are valid notwithstanding that, had the application correctly reflected the scope of the service actually to be rendered, the matter might have been referred to a different Joint Board.

2. The orders are not void by reason of the Commission's failure to require compliance with Sections 217 and 220 of Part II of the Interstate Commerce Act for the following reasons:

(a) The Receivers have filed motor-carrier tariffs and maintained accounts relating to their highway operations in the manner approved by the Commission or in conformity with their understanding of the Commission's requirements. That the procedure followed in this respect is not identical with that required for motor carriers not affiliated with railroads is of no consequence, for the Motor Carrier Act confers wide latitude upon the Commission to prescribe the form and content of motor carrier tariffs and accounts, and its discretion in this respect has not been abused.

(b) The only legal prerequisites to the issuance of a motor carrier certificate by the Commission are the findings prescribed by Section 207 of the Motor Carrier Act. The administration of the provisions of Sections 217 and 220 is ancillary to and does not condition the validity of its action under Section 207. Hence certificates otherwise lawfully issued are not vitiated by failure to require compliance with those sections.

(c) Assuming, *arguendo*, the verity of the appellants' contention that the Commission has improperly failed to require the Receivers to comply with Sections 217 and 220, administrative relief is available to appellants under Sections 204(c) and 216(e) of the Motor Carrier Act. Having failed to exhaust the remedy thus provided they cannot invoke the aid of the court.

3. The appellants' contention that they were deprived of a full and fair hearing by the improper exclusion of evidence is without foundation:

(a) With respect to every subject of which the appellants complain either evidence was received, the reason it could not be furnished was satisfactorily explained, or the proffered testimony was clearly irrelevant.

(b) The only injury which the appellants claim to have resulted from the asserted exclusion of evidence is that they were unable to defend themselves against unfair and destructive competition. They have failed to particularize how they would be prejudiced or to endeavor, either before the Commission or the court below, to substantiate these charges. The Court will not, in these circumstances, presume that they have been denied a fair hearing.

(c) The Commission found, with abundant support in the record, that the Receivers' operations would have no substantial competitive impact on existing motor carriers. None of the evidence claimed to have been excluded would have controverted this finding. Hence, even had that evidence in fact been excluded, its rejection would have been non-prejudicial.

4. The appellants' position that the Commission has adopted erroneous criteria in determining applications by railroads for motor carrier certificates is without foundation. What the appellants regard as a variance in standards of proof exacted by the Commission of the Receivers on the one hand and independent motor carriers on the other is merely a controlling factual difference which has constrained the Commission to reach a conclusion with respect to public convenience and necessity unacceptable to the appellants but unassailable in law. In making this ultimate finding, however, the Commission has exacted and applied identical tests in both classes of cases.

5. The attack upon the Commission's orders on the ground that the Receivers' motor operations will tend to create monopoly in the transportation field is wholly without substance. In administering the Motor Carrier Act the Commission's task is to enforce the policies of the Interstate Commerce Act and other legislation bearing upon transportation service and facilities. Even though in executing its statutory mandates the Commission may not entirely ignore the policies of the anti-trust laws its duties in that respect are fully and properly discharged if it estimates the scope and appraises the effect of the curtailment of competition which may result from its action. That it has done so in this case is conclusively demonstrated by the record.

6. Implicit in the objectives of this suit and the theories advanced by the appellants in its support is the claim that the use of the highways for commercial transport is the exclusive prerogative of motor carriers not affiliated with railroads. Both the legislative history of the Motor Carrier Act and the broad regulatory

principles announced by the National Transportation Policy reject this view and evidence clearly and affirmatively that operation by railroads of the type of motor carrier service authorized by the Commission and performed by the Receivers was contemplated by Congress. The extent to which and the conditions upon which they should be permitted to do so is one of the complex problems which has been committed to the experienced and expert judgment of the Commission. Its discharge of this task is, under repeated decisions of this court, to be free from judicial interference when, as here, it has acted within the boundaries of its administrative discretion, and its findings and conclusions are supported by the record.

7. Regardless of the merits, the relief sought in this suit should be denied by reason of the appellants' laches. The Receivers' operating rights which are here challenged were authorized by order of the Commission dated July 11, 1939, 17 M. C. C. 413, 433, and February 17, 1940, 21 M. C. C. 773, 775. By these orders every issue involved in this litigation was framed and the appellants were at liberty to bring this suit immediately after these orders were entered. Nevertheless the complaint was not filed until October 21, 1943. In the intervening period of almost four years the Receivers, relying upon the unchallenged operating rights which they had received from the Commission, initiated their services, and so adjusted their transportation machine as to integrate them with their rail operations. These changes, essential to meet the extraordinary demands of war traffic, would have been differently made had this suit, with its threat to the legality of the Receivers' motor carrier certificates,

been brought in timely fashion. The disruption of a vital transportation service which would attend the nullification of the Receivers' operating rights would under normal conditions be fraught with public concern. In a time of national crisis the public interest, including that of the government as a large shipper of military personnel and material, is of such paramount importance as to demand the utmost dispatch in cases of this character. The appellants' delay, which has not been satisfactorily explained, should of itself persuade the court to deny the requested relief.

V.

ARGUMENT.

The attack upon the validity of the orders of the Commission on the ground that the joint boards were improperly composed cannot be sustained.

Section 205(a) of Part II of the Motor Carrier Act provides as follows:

> "The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three states, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three states, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, * * *. The joint board to which any such matter is referred shall be composed solely of one member from each state within which the motor carrier or brokerage operations involved in such matters are or are proposed to be conducted * * *. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing, and the recommendation of an appropriate order thereon; * * *."

As explained in the Statement of the Case, *ante*, p. p. 2-11, the orders complained of grant to the Receivers certificates authorizing motor carrier operations over fourteen routes for each of which a separate application was filed with the Commission. Eight of the applications covering contiguous routes which compositely traverse the States of Virginia, North Carolina and South Carolina* were filed concurrently on February 23, 1937, the remainder at various times thereafter up to August 15, 1938. Each of the applications was referred to a Joint Board composed of one member from the state or states in which the route involved in the application was situated. Thus the Boards consisted of one or two members dependent upon whether or not a state line was crossed.

The appellants contend that since the contiguity of the eight routes for which applications were concurrently filed permitted operation in three states, the proceedings should have been consolidated and referred to a Joint Board consisting of one member from each of the three states, or, in the alternative, that since the operations proposed by the Receivers were auxiliary to and supplemental of their rail service they were so integrated therewith that they should have been regarded as involving the six states traversed by the rail lines of the Receivers and accordingly referred to an Examiner. This position, we submit, is wholly untenable.

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*See map, Appendix A.

I.

The uncontroverted evidence of record conclusively sustains the Commission's action in overruling the attack upon the composition of the Joint Boards.

Joint Boards to which applications for certificates of public convenience and necessity sought under Section 206 of the Motor Carrier Act (U. S. C. A., Title 49, Sec. 306) are to be referred are required by Section 205(a) to consist "solely of one member from each state within which the motor carrier * * * operations involved * * * are or are proposed to be conducted." The appellants claim that though the Receivers segmented their contiguous routes through separate applications it was their purpose to unify their highway operations into a continuous service involving three or more states, and hence the one of two member Joint Boards to which the applications were referred were erroneously composed.

The record squarely contradicts the factual premise of this contention. It demonstrates that these motor operations, designed as they are to function as substitutes for rail service in the collection and distribution of less-than-carload freight, are not intended to be, and could not effectively be, used to replace rail cars for long distance hauls. Each truck route is established in relation to a portion of the rail system lying between principal rail points at which package freight may advantageously be transferred for distribution by truck to intermediate minor stations. The object is merely to eliminate the necessity of train stops at the small intermediate points for the delivery and collection of less-than-carload freight. There is

not, and could not in reason be, any purpose to eliminate rail service for less-than-carload shipments to the principal points themselves, for rail service to such points is indispensable in any case for the handling of freight in carload lots. Thus the several routes, whether contiguous or disconnected, were by nature designed to function locally and not interdependently. And the filing of separate applications merely corresponded to the segmented nature of the service proposed.

Without undertaking to quote in its entirety the voluminous evidence in support of the foregoing, we call attention to the following general statement on the subject by W. L. Stanley, a witness for the Receivers in the hearing of the applications covering the four routes in North Carolina, Docket MC 86687, Sub Nos. 2, 4, 5 and 6. Mr. Stanley testified as follows (R. 570):

> "Q. (By Mr. Watkins): Is it not the policy of the Seaboard Air Line Railway to parallel its rail service, all of its rail service with motor carrier service?
>
> "A. It is not.
>
> "Q To what extent are you going to do it?
>
> "A. I can answer that question by telling you that up to the present time, we have studied individual geographical situations to see what we can do by coordinating rail and truck service, and that at no time have we ever considered the proposition of paralleling the entire railroad with truck service, and I might say, Mr. Watkins, that in my opinion, that will never happen.

"Q. Mr. Stanley, you have now pending before the Interstate Commerce Commission, eight applications, have you not?

"A. I believe it is seven or eight.

"Q. And those were prepared by you, were they not?

"A. I prepared the applications, yes.

"Q. And those applications in effect establish motor carrier service from Richmond, Virginia, to the South Carolina-Georgia line, and from Wilmington, North Carolina, to Rutherfordton, North Carolina, is that not true?

"A. Considering them as a whole, that is true. *Considering them in respect to their physical operation, it is not true.*

"Q. But you are unwilling to have it stipulated in any of these applications that freight not be handled between any of those points except partly by rail and partly by motor carrier?

"A. I am not willing that that be done, because I can conceive of instances, comparatively few, where it would be desirable to transfer freight from one truck service to another truck service.

"Q. And wherever it is more expeditious or economical, you will do that?

"A. I think so, yes.

"Q. Thus, under these unlimited certificates, it would be possible to handle shipments from Richmond, Virginia, to Columbia, South Carolina, entirely by truck?

"A. It would be possible, but hardly conceivable.

"Q. And it would be possible to handle shipments between Richmond, Henderson, Raleigh, Wilmington, Hamlet, Monroe, Charlotte, Columbia, Rutherfordton, and Shelby?

"A. In some instances it would be physically possible to do that, but the reason that that would not be adopted as a practice, is the fact that there is no form of transportation of which I have knowledge that is as cheap as rail transportation, provided you have the amount of business that will justify the operation of rail service. *To go one step further, we would be perfectly foolish to handle a shipment by truck from Richmond, Virginia, to Columbia, South Carolina, when we have a car moving in a through tonnage train between those points daily.*" (Italics supplied.)

Mr. Rogers, another witness for the Receivers, testified with respect to the Monroe-Rutherfordton route as follows (R. 383):

"Q. Mr. Rogers, you operate a truck service between Hamlet and Monroe, do you not?

"A. That is correct.

"Q. Will you give us the schedules of that operation?

"A. It leaves Hamlet at 6:45 A.M., arrives at Monroe at 9:40 A.M., and return trip, leaves Monroe at 10:30 A.M., arrives at Hamlet at 2:00 P.M.

"Q. In scheduling your Monroe-Rutherfordton service, Mr. Rogers, has there been any effort or purpose in so arranging that schedule as to hook up with your Hamlet-Monroe service?

"A. You mean the Hamlet-Monroe truck service?

"Q. Yes, your Hamlet-Monroe truck service.

"A. *There has been no effort made to make a hook-up of that kind and there is none contemplated.*

"Q. *Are your schedules such as to make it possible to carry through shipments by truck with reasonable expedition between points intermediate between Rutherfordton and Monroe on the one hand, and points intermediate between Monroe and Hamlet on the other?*

"A. *No, sir. There would be more delay than would be the case with a coordinated truck-rail service, and that is a service that we would perform.*

"Q. *You would make no effort then, I understand, to establish a through truck service between Rutherfordton on the west and Hamlet on the east?*

"A. *No, sir. There would be no occasion for it.*" (Italics supplied.)

Again, in the testimony relating to the route between Hamlet and Columbia, Docket MC 86687, Sub No. 3, the following appears (R. 270):

"Q. (By Mr. Abeles). Mr. Rogers, Mr. Watkins, in his cross examination, attempted to develop the view that through the various truck services which we are proposing to establish we intend to set up a system of through truck transportation, in purpose and effect, that would compete with existing highway carrier agencies. He brought out, for example, the fact that we are now seeking to establish truck service between Wilmington and Hamlet and that we thus should be in position to carry traffic on trucks all the way from Wilmington to Columbia. I should like you to state your views on that assumption that Mr. Watkins made.

"A. Such a movement would be possible but would be simply incidental and to a con-

siderable extent improbable. We do not contemplate the elimination of any existing package cars. We have package cars out of Columbia into Hamlet, out of Hamlet into Columbia, out of Hamlet into Wilmington, out of Wilmington into Hamlet. The volume of that business is such that it would not be profitable for us to undertake to handle it by truck—the larger part of it, because it would necessitate so many trucks that the truck expense for that volume would be out of reason as compared with the cost of the train movement. In other words, where the volume is present the economical move is by train service.

"Q. In other words, as I understand what you have just said, if we have train service available between, for example, Wilmington and Columbia, we shall use the train service in preference to the truck service in the absence of some other reason for using the trucks. Is that correct?

"A. That is correct. That is just ordinary good railroading. At the present time we make cars at Hamlet, for instance, for Cheraw, McBee and Columbia. Our night trains have carload movement to and from those points every night. The volume of the LCL freight going to those three towns justifies the set-out car, and consequently that is the economical thing to do, and that is what we would continue to do. *The points we are specifically trying to serve are the smaller intermediate points, where the train would normally have to make a separate stop for the simple purpose of having to handle a very small volume of LCL freight.*" (Italics supplied.)

The foregoing excerpts from the testimony in these three hearings are characteristic of similar descriptions

of the nature and scope of all of the proposed services.* They prove beyond dispute that, as stated, the essential function of each of the respective routes is independent and self-contained. and furnish a conclusive answer to the persistent claim of the appellants that the contiguous segments are to be integrated and their operations unified.

Possibly the appellants will refer to the statements of the Receivers' witnesses that occasionally shipments may be transported by truck from a point on one route to a station on an adjacent route, and to the refusal of the Receivers to accept a restriction which would prohibit such handling. It was explained that in exceptional instances it might be desirable, when otherwise inordinate delay would occur, to carry a shipment by truck between points on contiguous routes, but that these instances would be rare and would comprise not more than 5% of the tonnage moving by highway (Hamlet-Columbia, Sub 3, R. 271, 277). The reason for this infrequent practice is evident. There is a small flow of traffic between the local stations intermediate between the truck termini which, when offered, the Receivers must accept and handle. If, for example, a shipment from LaCrosse, Va., on the Richmond-Henderson route, to Franklinton, N. C., on the Henderson-Raleigh route, was offered, and the intervention of Henderson as a truck route terminus prohibited the use of the truck service beyond that station, a peddler freight car would have to be operated from Henderson to destination, a distance of only 15½ miles, for the sole purpose of handling that single

*Other examples are: Henderson-Raleigh, Sub 2, R. 535, 536; Hamlet-Wilmington, Sub 5, R. 600, 604, 605; Raleigh-Hamlet, Sub 4, R. 614, Richmond-Henderson, Sub 7, R. 477, 478, 483, 495, 500.

shipment, perhaps a small package. Since one of the principal benefits to be derived from the auxiliary truck operation is the elimination of the use of such cars, it is obvious that an arbitrary prohibition against crossing truck termini through interchange between trucks would to a substantial degree impair the efficacy of the service.

As previously explained, however, use of the trucks for this inter-route service is rare and exceptional, and does not alter the dominant function of each segment to serve the local territory between the respective termini. The evidence to this effect was before the Commission before it disposed of the appellants' motions to consolidate the proceedings and refer them to differently constituted Joint Boards. The Commission was therefore able, as the court below has said (R. 210), to determine, independently of other reasons, whether the proposed services were of such scope and nature as to constitute local or through operations, and this Court will not substitute its judgment for that of the Commission in a field which has been committed to the discretionary authority of the administrative tribunal.

Finally, it should be observed that, while, as the record shows, there can be no doubt that the Receivers neither conceived nor intended their motor carrier operations as a vehicle for long-distance unified service, had their purpose been otherwise it was thwarted by the restrictions with which the Commission has surrounded its authority. The key stations imposed by the Commission's order in 34 M. C. C. 441, R. 151, sharply delimit the areas in which the Receivers' trucks may be used by providing that no shipments

shall be transported between or to or through or from more than one of the named key points.* Reference to Appendix A will illustrate the extent to which the scope of the service on each route is thus curtailed. Henderson, N. C., and Raleigh, N. C., are the termini of one of the truck routes. Both have been named as key stations. The restriction precludes the highway movement of a shipment from Henderson, or a point north thereof, to Raleigh or any station south of Raleigh. Similar restrictions affect the permissible service on each of the contiguous truck routes. With the Receivers' discretion thus restrained it cannot be seriously maintained that the asserted unification of services, which necessarily underlies the attack on the composition of the Joint Boards, is more than a figment of the appellants' imagination.

2.

The appellants' construction of Section 205 is in conflict with the plain meaning of the language used and is defeated by compelling practical considerations.

While the challenge of the Commission's orders on the basis of the composition of the Joint Boards is, as we have seen, refuted by the record, if we accept the appellants' factual averments at their face value and assume that there is a substantial variance between the proposals embodied in the applications and the proof of the service intended, there is still no merit in the appellants' contention that to carry the applications to a conclusion on the records made before the Joint Boards as constituted infected the entire proceedings, including the orders issued therein, with illegality. The

Ante, pp. 7, 8, R. 159.

appellants' position in this respect had been urged before the Commission from the beginning, and reiterated at every stage through which the cases progressed to final decision.* In response to this emphasis, and prompted also, no doubt, by the novelty of the question, the Commission disposed of it adversely to the appellants only after studious consideration and discussion. Its conclusions were based first on an examination and interpretation of Section 205(a), at that time 205(b), of the Motor Carrier Act, and second on the uncertainty and complexity which would attend the administration of the Motor Carrier Act if the protestants' theory were sustained.

With respect to the interpretation of these provisions the Commission said (17 M. C. C. 413; R. 85):

> "The particular provisions of the act upon which protestants rely are contained in Section 205(b) and so far as here pertinent read as follows:
>
> " 'The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three states * * * refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations: Applications for certificates, permits or licenses * * * The joint board to which any such matter is referred shall be composed solely of one member from each state within which the motor carrier or brokerage operations involved in such matter are or are proposed to be conducted.'

Ante, pp. 3, 4.

"It will be noted that the words 'such matter' are in the singular, and clearly relate back to the preceding language, 'any of the following matters arising in the administration of this part with respect to such operations.' Thus understood, it seems beyond argument that it relates to any one of the matters mentioned, rather than to a number of them, and hence refers to an individual application. In other words, the language, 'motor carrier or brokerage operations involved in such matter' clearly means 'motor carrier or brokerage operations involved in such application.' If such application covers an operation confined within the boundaries of a single state, it is obviously the 'matter' which we are required to refer to a joint board composed solely of one member from that state."

The practical administrative difficulties which the appellants' position would entail were explained as follows (17 M. C. C. 416, R. 86):

"It is true, as protestants point out, that a possible result of granting the applications included in the title proceeding and in sub numbers 1 to 8, which include routes between Richmond and Columbia, would be a unified service in three states, and that applicants may have intended such result when the several applications were filed. However, it is manifestly impossible to predict accurately such a result when applications for certificates or permits are filed with us, or to determine the existence of such an intent on the part of the party filing the applications. In the majority of cases such a result would become apparent only upon hearing the applications. On the other hand, the hearing or hearings might disclose that a unified

operation was not contemplated, even though the same party filed a number of applications covering operations in adjoining states. In the latter event, if we had assigned the applications before a two-member or three-member board, as the case might be, in advance of any certain knowledge that a unified operation in more than one state was contemplated, we should be under the necessity of reassigning the applications before the proper joint boards."

This conclusion is clearly sound. If the Commission, because of variance between the initial proposals and the proof, and quite without reference to any element of misrepresentation, must discard its original assignment and resort to new Joint Boards or an Examiner, what assurance has it that the hearing *de novo* would not develop further discrepancies between application and proof which would again require a new start? The embarrassment and delay to which the Commission might be subjected in carrying out its administrative duties if the appellants' contention is sustained are thus self-evident.

In addition to the reasons assigned by the Commission for its construction of Section 205(b) (now Section 205(a)) it should be noted that the Act provides that the personnel of the Joint Boards shall consist "of one member from each state within which the motor carrier operations * * * are proposed to be conducted." In the absence of persuasive considerations to the contrary this language must be taken in its literal sense. The *operations* proposed are those for which authority is sought in the application. Had the Congress intended, as the appellants' contention here necessarily implies, that the criterion of the composition

of the Boards be the full scope of the *service* made *physically possible* by the proposed operation, regardless of the more limited purpose disclosed by the application, it would have so indicated by appropriate and unambiguous language. Lacking such plainly expressed intent, and in the absence of fraud or deceit designed to mislead the Commission in the performance of its administrative duties (a subject later discussed), the Commission is entitled, and indeed for the compelling practical reasons explained in its decision above quoted is constrained, to rely upon the territorial scope of the operations designated in the application in forming the Joint Board to which the proceeding is referred. *Carolina Scenic Coach Lines* v. *United States*, 56 Fed. Supp. 801, 802.*

The principle thus established has been consistently followed by the Commission in later cases. In *Atlantic Coast Line Railroad Company Extension of Operation*, 30 M. C. C. 490, 491-2, *West Coast Bus Lines Common Carrier Application*, 32 M. C. C. 619, 621-22, and *Argo and Collier Truck Lines Common Carrier Application*, 27 M. C. C. 563, 566, protestants attacked the composition of the Joint Boards on much the same grounds as the appellants advanced here, and the Commission reaffirmed the ruling applied in the Receivers' cases in 17 M. C. C. 413, 416. Moreover, appellant motor carriers themselves have from time to time applied to the Commission for certificates authorizing operations over routes lying wholly within a single state but which connected, and were to be used in conjunction, with their already established lines traversing two or more states. In these instances the

*Affirmed, — U. S. —, 89 L. Ed. 235, 65 Sup. Ct. Rep. 277.

applications were referred, without protest from the appellants, to a Joint Board of which the sole member was a representative from the single state in which the extension was located. (Stipulation No. 4, R. 195).

Thus the interpretation of Section 205(a) applied in the instant cases, and accepted without protest by the appellants in seeking their own certificates, has become firmly entrenched in the Commission's administration of the Motor Carrier Act. As such it is entitled to the high respect which by established principles courts accord to the construction placed upon legislation by the tribunal to which its administration is delegated. A recent decision affirming this doctrine is *United States* v. *American Trucking Associations*, 310 U. S. 534, 84 L. Ed. 1355, 60 Sup. Ct. Rep. 1059. In that case an interpretation of the Motor Carrier Act, although a different section* from that here under consideration, was also involved, and the decision is therefore particularly apt. The Court said (310 U. S. 549, 84 L. Ed. 1354, 60 Sup. Ct. Rep. 1067):

> "The Commission and the Wage and Hour Division, as we have said, have both interpreted Section 204(a) as relating solely to safety of operation. In any case such interpretations are entitled to great weight. This is peculiarly true here where the interpretations involve 'contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.' Furthermore, the Commission's interpretation gains much persuasiveness from the fact that it was the Commission which suggested the provisions' enactment to Congress."

*Section 204(a).

It is clear that as to purely procedural requirements the interpretation of the body charged with administration under the statute should carry all but controlling weight. And when, as here, property rights have arisen under the departmental construction the rule calls for rigid enforcement. *Chicago & A. R. Co.* v. *United States*, 49 Ct. Cl. 463, aff'd 242 U. S. 621, 61 L. Ed. 533, 37 Sup. Ct. Rep. 241.

Two federal courts have recently considered whether grants of motor carrier certificates are invalid by reason of alleged defects in the composition of the Joint Board to which the application was referred, and in each instance have refused to sustain attacks on grounds similar to those advanced here. In *North Coast Transportation Co., et al.* v. *United States*, (1944) 54 Fed. Supp. 448, the plaintiffs sought to set aside an order of the Commission granting to a competing motor carrier a certificate to operate, among other routes, between Portland, Oregon, and Seattle, Washington. The application to the Commission included requests for operating rights in Arizona, California, Oregon and Washington, and, involving four states, was referred to an Examiner. At the hearing no evidence relating to the proposed Arizona service was offered and the request for authority in this respect was virtually abandoned. Thereupon the plaintiffs moved to refer the application to a Joint Board consisting of one member from each of the three remaining states. The Commission's refusal to grant this motion was claimed to invalidate the order granting the certificate.

In overruling this contention the Court said:

"The question is, where an application proposing operations in more than three states is assigned to an Examiner, and the proof offered by applicant substantially relates to only three states, is it then mandatory that the proceeding be reasssigned to a Joint Board? We think the statute cannot be so interpreted. 'Applications for certificates' are included in the 'matters' to be referred to a Joint Board. In making the reference, the operation proposed by the applicant must necessarily be determined from the application rather than from the supporting evidence. In disposing of plaintiffs' contention Division 5 of the Commission said (32 M. C. C. 621): 'In the absence of any showing of any intentional deception or fraud, an application, once lawfully referred either to an Examiner or to a Joint Board of either three or two members, may properly be disposed of by such referee, even though during the course of the hearing applicant wholly fails to support or otherwise abandons his proposal as to one or more states, so that the number actually finally involved is less than originally appeared. Any other conclusion would tend to uncertainty and confusion. In innumerable hearings, jurisdictional issues, requiring final determination before proceeding, would arise as to whether or not there had been a failure of proof as to a particular state.' The views of Division 5 were adopted by the full Commission. (41 M. C. C., p. 270).

"There is no evidence of fraud or deception on the part of West Coast, and plaintiffs stated at the hearing that they made no claim of bad faith. We think the action of the Commission in refusing to reassign the proceeding to a Joint Board was proper."

In a recent decision by the District Court for the Southern District of New York in *Crichton* v. *United States*, 56 Fed. Supp. 876, the court, on facts similar to those of the *North Coast Transportation Company* case, followed the decision of the California District Court, saying (p. 879):

> "Plaintiffs urge at the outset that the order of the Commission is void, since the Section 207(a) application involved operations in 'not more than thee states', and hence that reference for hearing before a joint board, rather than an examiner, was mandatory under Section 205(a). But the original application of July 16, 1938, covered operations between Nashville and New York, well in excess of three states; and in the absence of direct evidence of fraud or deception, the Commission should not be obliged to go beyond the face of the application in determining whether or not reference to a joint board is mandatory. Any other rule would be the source of endless confusion and needless circuity of action. See West Coast Bus Lines, Ltd., Common Carrier Application, 32 M. C. C. 619, 621-622, approved as to this issue by the full Commission, 41 M. C. C. 269, 270, and thereafter by a statutory court in *North Coast Transportation Co.* v. *United States*, D. C. N. D. Cal., 54 F. Sup. 448, 450, 451."

Both of these decisions were appealed to and affirmed by this Court.* In the *North Coast Transportation Company* case the appellants filed a motion for rehearing which was denied.** That in taking this

*The *North Coast Transportation Co.* case, — U. S. —, 65 Sup. Ct. Rep. 62, 89 L. Ed. 29. The *Crichton* case, — U. S. —, 65 Sup. Ct. Rep. 559, 89 L. Ed. 476.

**— U. S. —, 65 Sup. Ct. Rep. 114, 89 L. Ed. 69.

action the decision of the lower court on both the procedural and substantive issues involved was approved is evidenced by the reply to the motion to affirm in which one of the grounds vigorously advanced by the appellants in opposing the motion was the asserted error of the lower court in its ruling on the Joint Board issue.* Thus, in the absence of fraud and deception, this Court has specifically rejected the position of the appellants here with respect to the composition of the Joint Boards. How tenuous are the charges that the Receivers misled the Commission appears from the discussion that immediately follows.

3.

No element of fraud or deception is present.

The Commission's report reviewed in the *North Coast Transportation Company* case, *supra*, and the decision of the court sustaining the Commission's order suggest that the result might possibly have been different had the applicants before the Commission been guilty of fraud or deception. The Complaint in the instant case (Section III, R. 4) alleges, among other things:

> "The repetition of applications for rights disclosed a substantial program for the conduct of highway operations generally paralleling the railway system and involving several states, *and that the separate applications had the effect of concealing the true nature of the applications and of evading the statutory requirements for a hearing.*" (Italics supplied.)

*Pp. 37-41 of Appellants' Reply to Motions to Affirm in Appeal from Second Final Decree.

The innuendo in the italicized language that the filing of separate applications by the Receivers was designed to mislead the Commission, and the explicit assertion that their course of action had the effect of so doing, both of which the Receivers unequivocally deny, compel us to meet these contentions, tenuous though they be.

It should be observed at the outset that the averments alleging that the tactics of the Receivers were misleading and evasive are, when read with their context, inconsistent and self-contradictory. The second paragraph of Section III of the Complaint (R. 4) states that "the numerous separate applications of the railway for certificates of public convenience and necessity * * * constitute in fact and substance one application for integrated operating rights." The third paragraph, quoted above, asserts in the opening clause that the applications "disclosed a substantial program for the conduct of highway operations generally paralleling the railway system" and immediately follows this with the accusation that "the separate applications had the effect of concealing the true nature of the applications and of evading the statutory requirements for a hearing." In the following paragraph, *per contra*, it is stated that "the extent and scope of the proposed operations were disclosed to the Commission through numerous applications." (R. 4). In one breath the appellants charge the Receivers with concealing their intent and purpose from the Commission and in the next they claim that the very same acts *fully disclosed* to the Commission what the Receivers had in mind. The inconsistency of these two positions defies reconciliation and leaves the Complaint obscure, uncertain and self-contradictory.

If the Complaint in this particular has any meaning we assume it must intend to charge that, although proposing in fact to establish an integrated motor carrier operation over the routes which were physically connected, in which event the proceedings should have been referred to a three member Joint Board or an Examiner, the Receivers, by filing separate applications for each route, misled the Commission into the belief that they should be considered as separate, non-unified projects, and that as a consequence the Commission mistakenly referred the applications to Joint Boards consisting of one or two members, as the case might be.

The history of the proceedings in which the Receivers' certificates were obtained is in itself a conclusive answer to this charge. The contiguous routes comprise those for which authority was sought in the eight applications first and concurrently filed (17 M. C. C. 413, R. 81). Although the testimony supporting the several applications was received in separate hearings, it disclosed fully the purpose for which the proposed operations were designed and the manner in which they were to be conducted. (*Ante*, pp. 20 to 24). Before rendering its decision in a consolidated report, the Commission had before it the evidence in all of the cases, or, in its own language, "we now have the entire situation presented by the several applications before us in all of its aspects, following full and complete hearings" (17 M. C. C. 417, R. 86). It also had under consideration the appellants' motions requesting consolidation (R. 45, 46) which asserted that the Receivers were "attempting to establish a through and complete motor carrier operation from Richmond, Va.,

on the north, to the Georgia-South Carolina line on the south, and from Wilmington on the east to Rutherfordton on the west * * *." The denial of this motion, made in the light of the full record in all of the proceedings, is conclusive that the Commission was fully apprised of the nature and scope of the proposed operations, and, as the court below found (R. 213), is a complete negation of the invidious purpose with which the Receivers are charged.

The orders are not void by Reason of the Commission's failure to require compliance with Sections 217 and 220 of the Interstate Commerce Act.

Sections XII and XIII of the Complaint (R. 20) claim that the Commission arbitrarily and capriciously failed and refused to require the Receivers to comply with the provisions of Sections 217 and 220 of Part II of the Interstate Commerce Act, and, by setting up standards for the filing and publication by the Receivers of motor carrier tariffs and for the maintenance of their accounts different from those established for the appellants, subjected the latter to unfair, unreasonable and discriminatory competition. These averments present parallel questions and will therefore be discussed together.

Section 217(a), containing the provisions here relevant, provides:

> "Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of pas-

sengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in the terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful."

The material portion of Section 220(d) provides:

"The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by motor carriers, brokers, and lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys; and it shall be unlawful for such carriers, brokers, and lessors to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto."

It should first be observed that the tariffs required by Section 217(a) "shall be published * * * in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe," and that the accounts to be maintained in accordance with Section 220(d) shall be those which "the Commission

may, in its discretion, prescribe." It is thus manifest that the Congress conferred upon the Commission wide latitude in prescribing the form and content of motor carrier tariffs and accounts and virtually complete discretion in this field of regulation. Therefore, unless it has obviously failed in its duty in these respects the appellants have no tenable cause for complaint.

The record establishes that the Receivers file motor carrier tariffs and maintain accounts relating to their highway operations. Stipulation No. 2 filed by the parties (R. 190) shows that the Receivers have extended to their motor operations the same rates as are applied to their rail service, and that this action has been evidenced by motor carrier tariffs* published in the form and manner which they deem to be in full compliance with the requirements of the Commission promulgated in a report in the proceeding known as *Ex Parte* 129, 232 I. C. C. 683, wherein the Commission considered and decided the method to be followed by the Receivers and other railroads in publishing tariffs covering the auxiliary type of motor carrier service which they provide. In Stipulation No. 3 (R. 191) the parties agree that, with respect to the procedure to be followed in accounting for their motor carrier operations, the Receivers have been authorized by the Commission to include, and have included, in their reports covering their rail operations the revenues and expenses of their motor service.

Thus the Commission has specifically exercised its

*The assertion in appellants' brief (p. 105) that the Railway "does not publish a motor carrier tariff" is erroneous. The Directory referred to in Stipulation No. 2 is filed with and accepted by the Commission as a motor carrier tariff.

functions under Sections 217 and 220, and directed or authorized the manner in which the Receivers shall comply with the provisions of those Sections. That the procedure prescribed is not identical with that adopted for motor carriers unaffiliated with railroads does not invalidate the requirements. The discretion which, as shown, has been vested in the Commission plainly leaves room for adapting the measures used in administering Sections 217 and 220 to the varying needs and circumstances that may arise. The Commission having determined that the tariff and accounting regulations for the auxiliary motor carrier service of railroads need not conform in all respects to the requirements for independent motor carriers, its decision cannot be questioned unless resultant violations of other provisions of the Interstate Commerce Act, which are absent here, be shown.

Moreover, even if we assume, *arguendo*, that the allegations of Sections XII and XIII of the Complaint are true, the orders granting the certificates are not for that reason void. Enforcement by the Commission of the provisions of Sections 217 and 220 is not an essential prerequisite of the granting of certificates pursuant to Section 207. The certificate shall issue

> "if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity."

If these findings are made and supported by the record the appellant is entitled to a certificate. The administration by the Commission of the provisions of Sections 217 and 220 is merely ancillary to and does not condition the validity of its action under Section 207. If it is derelict in its duty to enforce the former sections an injured party may have relief in an appropriate proceeding directed to that end, but cannot make such a proceeding the vehicle of an attack upon the certificate itself.

Finally, again assuming for argument that the allegations of Sections XII and XIII of the Complaint are true, the contention that the orders here challenged are therefore void cannot be sustained for a further and equally conclusive reason. If as a result of the Receivers' failure to comply with the requirements of the provisions of the Act relating to tariffs and accounting the appellants are subjected, as the Complaint avers, "to unfair, unreasonable and discriminatory competition," the statute furnishes their remedy. Sections 204(c) and 216(e) provide:

> "Section 204(c). Upon complaint in writing to the Commission by any person, * * * organization, or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier * * * has failed to comply with any provision of this Part, or with any requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation that the motor carrier * * * has failed to comply with any such provision or requirement, the Commission shall issue an appropriate order to compel the carrier * * * to comply therewith."

> "Section 216(e). Any person, State Board, organization, or body politic may make complaint in writing that any * * * practice, in effect or proposed to be put into effect, is or will be in violation of this section of or Section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any * * * practice * * * whatsoever of such carrier or carriers affecting such rate, fare of charge * * * is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential, it shall determine * * * the lawful * * * practice thereafter to be made effective * * *."

Violations of Sections 217 and 220 are manifestly a proper subject of complaint and investigation under either or both of these sections. The avenue of administrative relief thus provided must be pursued and exhausted before the appellants can invoke judicial aid.

This principle, the so-called "primary jurisdiction" rule, is so firmly imbedded in the law governing the procedure for the enforcement of, or relief from violations of, the Interstate Commerce Act, and indeed of the large and growing field of administrative statutes, that extensive treatment is not warranted. The leading case is *Texas & Pacific R. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 51 L. Ed. 553, 27 Sup. Ct. Rep. 350, where a shipper sought to recover from a railroad freight charges claimed to have been unreasonable, discriminatory and otherwise in violation of the Act. The Court held that the action would not lie unless and until the shipper had sought redress from the Commission which had the exclusive power, in the first instance, to deter-

mine the reasonableness and propriety of the rate. An exhaustive exposition of the reasons underlying this conclusion is summarized in the following language from the opinion (204 U. S. 440, 41 L. Ed. 559, 27 Sup. Ct. Rep. 355):

> "For if, without previous action by the Commission, power might be exerted by courts and juries generally to determine the reasonableness of an established rate, it would follow that, unless all courts reached an identical conclusion, a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to reasonableness by the various courts called upon to consider the subject as an original question. Indeed, the recognition of such a right is wholly inconsistent with the administrative power conferred upon the Commissiion, and with the duty, which the statute casts upon that body, of seeing to it that the statutory requirements as to uniformity and equality of rates is observed. Equally obvious is it that the existence of such a power in the courts, independent of prior action by the Commission, would lead to favoritism, to the enforcement of one rate in one jurisdiction and a different one in another, would destroy the prohibitions against preferences and discrimination, and afford, moreover, a ready means by which, through collusive proceedings, the wrongs which the statute was intended to remedy could be successfully inflicted. Indeed, no reason can be perceived for the enactment of the provision endowing the administrative tribunal which the act created with power, on due proof, not only to award reparation to a particular shipper, but to command the carrier to desist from violation of the act in the future, thus compelling the

> alteration of the old or the filing of a new schedule, conformably to the action of the Commission, if the power was left in courts to grant relief on complaint of any shipper, upon the theory that the established rate could be disregarded and be treated as unreasonable, without reference to previous action by the Commission in the premises. This must be, because, if the power existed in both courts and the Commission to originally hear complaints on this subject, there might be a divergence between the action of the Commission and the decision of a court. In other words, the established schedule might be found reasonable by the Commission in the first instance and unreasonable by a court acting originally, and thus a conflict would arise which would render the enforcement of the act impossible."

The doctrine thus enunciated has been uniformly adhered to in later decisions. *Keogh* v. *Chicago & N. W. Ry. Co.*, 260 U. S. 156, 67 L. Ed. 183, 43 Sup. Ct. Rep. 47; *Robinson* v. *B. & O. R. R. Co.*, 222 U. S. 506, 56 L. Ed. 288, 32 Sup. Ct. Rep. 114; *Midland Valley R. R. Co.* v. *Barkley*, 276 U. S. 482, 72 L. Ed. 664, 48 Sup. Ct. Rep. 342. It is unquestionably controlling here. Accordingly, for this as well as the other reasons above set forth, the order may not be set aside for alleged violations of Sections 217 and 220.

The appellants were not deprived of a full and fair hearing by the wrongful exclusion of evidence.

We turn now to the averments that evidence offered at the hearings before the Joint Boards and the Examiner was improperly excluded. Section VIII of the Complaint (R. 12) enumerates thirteen subjects which the Joint Boards are said to have refused to consider,* and Section XI (R. 16) lists twelve subjects (in large part the same) claimed to have been excluded by the Examiner at the consolidated hearing,** by reason of which the appellants allege that "they were unable to defend themselves against unnecessary, unfair and destructive competition and undue restraint of competition, and were denied a fair and reasonable hearing." (R. 13).

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* 1. The complete cost of the proposed truck operations.
2. The tonnage to be handled by truck.
3. The revenues to be derived from the truck operations.
4. The segregation of rail and motor expenses and revenues.
5. The economic effect on existing motor carriers.
6. The willingness and ability of existing motor carriers to perform the service.
7. Destructive competition flowing from subsidized truck operations.
8. The refusal of the railroad to enter into arrangements with the independent motor carriers.
9. Traffic to be diverted from existing independent motor carriers.
10. The motor carrier operations of the Railway Express Agency.
11. The intention of the railroad to consolidate its motor carrier operations.
12. The reasonableness of proposed rate and accounting practices.
13. The distinction between railroad convenience and public convenience.

** 1. Less-carload traffic.
2. Offers of motor carriers to establish joint rates and routes.
3. Rates to be charged.
4. Profitableness of the proposed operations.
5. Tonnage involved.
6. Cost of operations.
7. Segregation of rail and motor operations.
8. Segregation of interstate and intrastate traffic.
9. Use of railroad facilities and employes.
10. Alternative certificate conditions.
11. Coordination of service with independent motor carriers.
12. Competition and monopoly.

I.

With respect to every subject of which the appellants complain either evidence was received, the reason it could not be furnished was satisfactorily explained, or the proferred testimony was manifestly irrelevant.

It is impracticable, in a proceeding of the magnitude here involved, to set forth within the proper confines of this brief all of the testimony relating to the topics with respect to which the appellants charge that evidence was improperly excluded. But a *seriatim* consideration of the enumeration of Section VIII of the Complaint (R. 12), documented with references to the testimony relating to the subjects listed, will demonstrate that the appellants' Complaint is met at the threshold by the record itself.

(1) *The complete cost of the proposed truck operation.* In virtually every case the Receivers' operating witness testified to the estimated cost of the proposed service, based upon experience with similar services of the Receivers which had been in operation for some time. Hamlet-Columbia transcript, (R. 272); Gaston-Garnett, (R. 318, 364); Richmond-Henderson, (R. 437, 438); Henderson-Raleigh, (R. 548, 549); Monroe-Rutherfordton, (R. 584, 585); Hamlet-Wilmington, (R. 605); Raleigh-Hamlet, (R. 615); Greenwood-Great Falls, (R. 793); Monroe-Waxhaw, (R. 820); Jacksonville-Live Oak-River Junction, (R. 676).

(2) *The tonnage to be handled by truck.* Whenever available the less-than-carload tonnage handled to and from the stations to be served by the proposed operations was stated. Hamlet-Columbia, (R. 264, 265, 273, 274); Gaston-Garnett, (R. 339, 340, 368, 369); McBee-Sumter, (R. 394, 395); Richmond-Henderson, (R. 445, 446); Monroe-Rutherfordton, (R. 588, 589).

(3) and (4) *The revenues to be derived from the truck operations and the segregation of motor expenses and revenues.* It was explained that the truck services would be so closely integrated with rail operations that segregation of the revenues and expenses of the respective services was impracticable. Hamlet-Columbia, (R. 268, 269); Gaston-Garnett, (R. 341, 342); Jacksonville-Live Oak-River Junction, (R. 771).

(5), (7) and (9) *The economic effect on existing motor carriers, destructive competition flowing from subsidized truck operations, and traffic to be diverted from independent motor carriers.* These statements are but three different phrasings of the assertion that appellants were not allowed to show "unnecessary, unfair and destructive competition." We shall later discuss (*post*, pp. 57-59) the evidentiary basis for the Commission's finding that the proposed services would not invade the field of existing motor carriers. The references which are there made to the record disclose that this subject was fully explored.

(6) and (8) *The willingness and ability of existing motor carriers to perform the service, and the refusal of the railroad to enter into arrangements with the independent motor carriers.* No contention was made that existing motor carriers were *unwilling* to perform the proposed service, and witnesses for protestant carriers at the hearings were allowed wide latitude in showing the extent of their operations which they presumably claimed could be used for that purpose. See, for example, the transcript of the Richmond-Henderson hearing (R. 504 *et seq.*) at which testimony was received relating to the operation of existing motor carriers from Richmond, Va., on the north to Columbia,

S. C., on the south and from Wilmington, N. C., on the east to Rutherfordton, N. C., on the west, or, in other words, the entire territory covered by the group of eight applications first and concurrently filed by the Receivers. *The impracticability of utilizing independent operators and the many reasons for the Receivers' refusal to enter into such arrangements*, however, were fully explained by the applicants' witnesses, an example of such testimony appearing in the transcript of the hearings of the four North Carolina routes, i. e., Henderson-Raleigh, Hamlet-Raleigh, Hamlet - Wilmington and Monroe-Rutherfordton (R. 554 to 557). Moreover, certain protestant motor carriers conceded that when, as in most instances, they served only short segments of the proposed routes (R. 560, 627, 634) they could not provide the type of operation required (R. 514); and they were not prepared or willing to handle shipments in the small quantities for which the service was primarily designed (R. 516-17, 632). This and similar evidence in other proceedings fully support the Commission's findings that the proposed services cannot be effectively performed by existing motor carriers (28 M. C. C. 5, 21, R. 109, 114, 129).*

(10) *The motor carrier operations of the Railway Express Agency.* In this respect evidence was ex-excluded. From time to time efforts were made to inject

*The same conclusion has been reached by the Commission in many other proceedings in which railroads have sought motor carrier certificates for auxiliary or supplemental service. The reasons assigned by the Commission for this finding are virtually the same in all cases, stemming from the specialized nature of the service which requires for its effective functioning complete unity of control of both rail and highway operation. *Kansas City Southern Transport Co. Application*, 10 M. C. C. 221; *Gulf, Mobile & N. R. Co. Application*, 18 M. C. C. 721; *The Willett Co. of Indiana Extension of Operations*, 21 M. C. C. 405; *Rock Island Motor Transit Co. Application*, 21 M. C. C. 513; *Missouri Pacific R. R. Co. Extension of Operation*, 20 M. C. C. 563; *Indiana R. R. Extension*, 21 M. C. C. 73.

into the records the truck operations of the Railway Express Agency. Counsel for the protestant carriers, when asked what possible relevancy to the issues before the Commission such information might have, stated only that the Express Agency was owned by the railroads. (Hearing on petition for modification of restrictions, November 12th and 13th, 1941 (R. 110, 111). There was no claim that the Agency operated in the territory in which the Receivers' rights were sought nor any explanation of the relevancy of such testimony to any matter in issue. Its exclusion was therefore eminently proper.

(11) *The intention of the railroad to consolidate its motor carrier operations.* The testimony heretofore referred to (*ante*, pp. 19-24) demonstrates the extent to which this matter was discussed. The assertion that the Commission refused to receive and consider such evidence is categorically refuted by the record.

(12) *The reasonableness of proposed rate and accounting practices.* Rate problems and methods of accounting, for the reasons already explained (*ante*, pp. 42-46), have no conceivable bearing upon the issue of public convenience and necessity presented to the Commission in applications for certificates pursuant to the Motor Carrier Act. They are matters with respect to which the Commission's duties and authority conferred by Sections 217 and 220 come into play after a certificate has been granted, and they do not condition the granting of the authority. Accordingly, evidence in respect of these subjects was wholly immaterial.

(13) *The distinction between railroad convenience*

and public convenience. The relation between this feature of the Complaint and any action of the Commission in excluding evidence is obscure. On frequent occasions the protestants apparently claimed that the testimony of the Receivers showed railroad convenience but not public convenience and necessity. In so doing they urge a legal postulate and not a procedural objection. Moreover, they stand on a position which is squarely opposed by controlling decisions of this Court. *Texas* v. *United States*, 292 U. S. 522, 78 L. Ed. 1402, 54 Sup. Ct. Rep. 819; *New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 77 L. Ed. 138, 53 Sup. Ct. Rep. 45. In any event the record is so replete with uncontroverted evidence of the benefits which the public, as contrasted with the railroad, would derive from the proposed service that the charge that evidence in this matter was excluded is wholly baseless.*

2.

The appellants having failed to particularize the prejudice claimed to have resulted from the exclusion of evidence, the court will not presume that they have been denied a fair hearing.

While it is thus plain that the record itself demonstrates that the Commission's rulings on evidence are

*As to the eunumeration in Section XI of the Complaint (R. 16) of subjects regarding which evidence is alleged to have been excluded, it will be observed (1) that in large part they merely duplicate the subjects listed in Section VIII (R. 12), and (2) that these alleged exclusions refer to the further hearing and were therefore proper in view of the narrow purpose for which the proceeding had been reopened, i. e., "solely to determine whether Condition 3 as set forth in the prior report, 28 M. C. C. 5 (that is the key-station limitations as prescribed on oral argument), should be modified and, if so, the extent of such modification." Clearly, the appellants were not entitled at that stage to reopening *in extenso*. *Vinson* v. *Washington Gas Light Co.*, 321 U. S. 489, 64 Sup. Ct. Rep. 731, 88 L. Ed. 646; *Interstate Commerce Commission, et al.* v. *Jersey City, et al.*, 322 U. S. 503, 64 Sup. Ct. Rep. 1129, 88 L. Ed. 1064.

in fact beyond tenable criticism, there is another and equally controlling reason why the orders cannot be successfully assailed on that ground. As we have repeatedly stated, the injury which the appellants attribute to the asserted procedural irregularity in the handling of the cases is that it deprived them of the opportunity to defend themselves against "unnecessary, unfair and destructive competition and undue restraint of competition, and were denied a fair and reasonable hearing" (R. 12). Exclusion of evidence, however material it may be, does not *per se* invalidate the Commission's orders. Injury, tangible and substantial and not merely hypothetical, must appear.

A recent decision of this Court reaffirms this established doctrine. In *Chicago, St. Paul, M. & O. R. Co.* v. *United States*, 322 U. S. 1, 88 L. Ed. 771, 64 Sup. Ct. Rep. 842, the Court reviewed an order of the Commission granting motor carrier certificates to an applicant which in the course of the proceeding amended its application by withdrawing from the authority requested the right to operate between points in Minnesota. Nevertheless the Commission found that service in that territory was needed and included this area in the order granting the certificate. Five opposing railroads contested the order, claiming that the withdrawal of the request for operating rights had thrown them off their guard, that relying on the withdrawal they had refrained from submitting evidence touching the need for service in Minnesota, and that they had therefore been deprived of the opportunity for a fair and adequate hearing on the matters ultimately decided. The Court stated, however, that the petition for reconsideration which the protesting railroads had

filed with the Commission was not of record, that accordingly the Court could not determine "whether surprise was claimed and evidence was indicated that could be added on rehearing," and denied the relief sought, stating:

> "The Court endeavors to protect the right of parties to fair hearings, but it will not presume that their rights have been substantially denied when they do not embrace the opportunity to prove their grievance in the court below."

Although the appellants have persistently urged their protest against the exclusion of evidence the record before the Commission is barren of any particularization of prejudice more specific than the generality of the Complaint, and no additional evidence in this respect was offered to the court below. Section XIV of the Complaint (R. 21) does list two categories of asserted injury,* namely, (1) that the issuance of the Receivers' certificates threatens the economic stability of independent motor carriers, and (2) that the failure of the Commission to require equal rate making and accounting regulations of motor carrier operations of railroads and independent carriers subjects the appellants to unreasonable discriminatory and destructive competitive practices. But with complete liberty to

*A third statement merely consolidates and repeats the first two.

submit evidence substantiating these charges* the appellants have failed to do so before either the Commission or the Court. In this state of the record the appellants have offered to the Court no bais for concluding that they were deprived of a fair hearing by the asserted exclusion of evidence.

3

Since none of the evidence claimed to have been excluded would have controverted the Commission's finding that the Receivers' operations would have no substantial competitive impact on existing motor carriers, its rejection would have been non-prejudicial.

But even had the evidence complained of in fact been excluded the appellants cannot prevail in their contention for a further reason. The injury which is said to have flowed from the refusal of the Joint Boards to receive and consider the specified evidence is, as stated, the inability of the appellants to defend themselves against unnecessary, unfair and destructive competition and undue restraint of competition. In its report and order of July 11, 1939, issued after the original hearings (17 M. C. C. 413, R. 81), the Commission,

*The only evidence offered by the appellants and excluded by some of the Joint Boards related to existing truck operations in territory which did not include that served by the proposed route under consideration. In at least one proceeding even that limitation was not observed, the Board admitting testimony showing all motor carriers then operating throughout the entire area to be traversed by the group of eight contiguous routes proposed by the Receivers from Richmond, Va., to Columbia, S. C., and from Wilmington, N. C., to Rutherfordton, N. C., although only the service between Richmond, Va., and Henderson, N. C., was before the Board at the time (R. 504 *et seq.*). Moreover, in every case in which evidence of existing motor carrier operations within the limits of the particular application before the Board was offered it was received. The protestant motor carriers were therefore allowed to show in the several proceedings all existing motor carrier service throughout the entire area involved in all applications. This was admitted by counsel for the protestant truck lines at the hearing to modify the key stations, who stated: "The prior hearings did afford an opportunity to the independent truck lines to show the competitive aspects of the application and those independent truck lines accepted that opportunity * * *." (R. 1224).

finding that "in most instances there is adequate motor carrier service over the considered routes," reached the conclusion that it does not "appear from the records made in these cases *that there will be any great diversion of traffic from existing independent motor carriers*" (R. 105; italics supplied). In the report and order of January 24, 1941, (28 M. C. C. 5, R. 109) in which the motor operations of the Receivers and certain other rail lines were under consideration, the Commission, in discussing the auxiliary type of service to which the Receivers are limited, stated: "It was further found, and properly we think, *that the development of the coordinated service would not seriously endanger the operations of existing motor carriers*" (R. 114; italics supplied). Finally in its report and order of July 6, 1942, (34 M. C. C. 441, R. 151), modifying the key station restrictions previously imposed, the Commission found (R. 155):

> "The applicants' motor vehicle service has been and will continue to be of a different character from that performed by protestants or motor carriers generally, and this is so whether we grant or deny the requested changes, which would merely relieve applicants from what they consider burdensome limitations in performing that service, rather than change the character of service previously authorized. Applicants' motor vehicle operations have been and will continue to be limited to the handling of merchandise rail traffic to and from points on their rail line as a substitute for train service. It is but a substitution of a more efficient for a less efficient means of service. The traffic has been and will continue to be rail traffic which moves at rail rates and on rail billing and which the railway

has been and will continue to be under an obligation to transport. Applicants, as a motor carrier, do not solicit traffic from the general public but merely utilize motor vehicles in fulfilling their undertaking to transport as a railway. The motor vehicle service is so limited by Condition 1. The modifications requested will in no way change the character of the service applicants are authorized to perform as a motor carrier; *nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor carrier field.*" (Italics supplied.)

It is manifest from the passage just quoted that the conclusion of the Commission that the Receivers' auxiliary trucking service was not and would not in the future be competitive with independent motor carrier operations was predicated upon the inherent nature of the auxiliary service. Amounting to nothing more than the substitution of a more efficient for a less efficient means of operation in respect of traffic that would in any event move by rail, the auxiliary service was found to be at once beneficial to the public and innocuous to the legitimate interests and ambitions of the independent motor carriers. It will be observed that none of the enumerated subjects of the evidence claimed to have been rejected went to the inherent nature of auxiliary motor service performed by rail carriers, and hence could in no event have affected the conclusion of the Commission that such service does not invade the independent motor carrier field.

Even were the testimony bearing on this question conflicting, the Court would not substitute its judgment for that of the Commission. *Alton R. Co.* v.

United States, 315 U. S. 15, 86 L. Ed. 586, 62 Sup. Ct. Rep. 432; *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 62 Sup. Ct. Rep. 722, 86 L. Ed. 971. However, a cursory examination of the record will disclose that there is adequate basis for the Commission's conclusion. It was repeatedly shown that the proposed service would handle only less-than-carload traffic that would otherwise move by rail.* See Hamlet-Columbia transcript, (R. 247, 254); Gaston-Garnett, (R. 340, 341); Richmond-Henderson, (R. 436, 442); Hamlet-Raleigh, (R. 611, 612); Jacksonville-Live Oak-River Junction, (R. 670, 765). Hence, as the Commission has stated (34 M. C. C. 441, 443-4, R. 155):

> "The traffic has been and will continue to be rail traffic which moves at rail rates and on rail billing and which the railway has been and will continue to be under an obligation to transport."

In other words, the service is non-competitive on the highways with the operations of independent motor carriers because of its specialized nature; and it cannot be maintained that the evidence failed to establish what the nature of the proposed services was.

Moreover, in those cases in which the possibility that the proposed service would divert traffic from existing motor carriers was suggested, convincing reasons why that would not occur were advanced. For example, aside from the fact, just observed, that the Receivers' trucks would confine their service to handling traffic which had theretofore and would thereafter be moved by the railroad, the authorized routes, fol-

*The statement in the appellants' brief (p. 163) that the Receivers also proposed to handle carload traffic is without foundation.

lowing the rail lines, would in many instances be so circuitous as to prevent successful competition with the more direct highway routes of existing motor carriers (Hamlet-Columbia, R. 277, 278). The bulk of the tonnage handled would consist of merchandise which moves from distant origins, is carried to break-bulk points by rail, and would therefore be handled to destinations by the railroad if the Receivers' truck service was not available (Gaston-Garnett, R. 297).

Thus it is manifest that the thrice repeated finding of the Commission that the proposed services would not compete with existing motor carriers* finds abundant support in the record. Hence, even though the evidence, the exclusion of which is complained of, had in fact been rejected, its omission could not have altered in any way the ultimate conclusion of the Commission that the certificates should issue, and its exclusion was wholly non-prejudicial.

The Appellants' position that the Commission has adopted erroneous criteria for determining applications by railroads for motor carrier certificates is without foundation.

From the extensive treatment which on brief the appellants accord the contention that the orders here involved are void because the Commission has adopted erroneous criteria in determining the ultimate issue of public convenience and necessity it is evident that they attach paramount importance to this aspect of the case. Their position in this respect is stated in their own language as follows:**

*17 M. C. C. 413, 432, R. 105; 28 M. C. C. 5, 8, R. 114; 34 M. C. C. 443-4, R. 155.

**The quotations is from pages 34 and 35 of the appellants' brief.

> "In this case the Commission has applied, with full force and effect, certain criteria which the Commission has invented and developed piecemeal, by a series of related proceedings involving the same subject matter. The Commission now proceeds on the theory that when a railroad desires to improve its railroad service and desires to operate as both a railroad and a motor carrier, it is entitled to a motor carrier certificate as a matter of right.
>
> "This policy disregards the adequacy of existing motor carrier service; disregards the willingness and ability of existing motor carriers to coordinate their motor carrier operations and services with the railroad; disregards the effect of new and additional competition on the economic stability of existing independent common carriers by motor vehicle; and disregards the statutory requirements for a fair and reasonable hearing and the statutory requirements for findings of facts."

In other words the appellants claim that the standard of proof of public convenience and necessity demanded by the Commission of railroads in motor carrier cases differs in material respects from the tests applied when independent operators seek certificates, and that this discrepancy in the criteria adopted in the two classes of proceeding is arbitrary and capricious. Implicit in this position is a complete misconception of the scope and meaning of "public convenience and necessity" and a basic misapprehension of the manner in which that language has been applied by the Commission in these cases.

The term "public convenience and necessity" is generic. It attempts no more than to set up the guid-

ing framework for the exercise of the Commission's judgment, leaving to that expert tribunal the widest latitude for a more precise definition in an almost unlimited variety of circumstances. As this Court has said in *Chesapeake & O. Ry. Co.* v. *U. S.*, 283 U. S. 35, 42, 75 L. Ed. 824, 829, 51 Sup. Ct. Rep. 337, 339:

> "*There is no specification of the considerations by which the Commission is to be governed in determining whether the public convenience and necessity require the proposed construction.* Under the Act it was the duty of the Commission to find the facts, and, in the exercise of a reasonable judgment, to determine that question. *Texas & Pacific Ry. Co.* v. *Gulf, etc. Ry. Co.*, 270 U. S. 266, 273, 46 S. Ct. 263, 70 L. Ed. 578." (Italics supplied.)

In *Pennsylvania R. Co.* v. *United States*, 40 Fed. (2d) 921, the Court described in the following language the authority of the Commission to determine questions of public convenience and necessity (p. 923):

> "This discretionary authority * * * was vested in the Commission because of its peculiar function and extensive knowledge in respect to matters of interstate transportation, *and there is little in the statute to indicate, or to limit, the manner in which the Commission should exercise this discretion.*" (Italics supplied.)

Analogous provisions of state statutes have been similarly characterized. In a decision by the Supreme Court of Utah in *Union Pacific R. Co.* v. *Public Service Commission*, 135 Pac. (2d) 915, the Court said (p. 918):

> "As to what constitutes 'public convenience and necessity' must fundamentally have reference to the facts and circumstances of each given case as it arises, as the term is not, and was not intended to be, susceptible of precise definition."

Thus the term "public convenience and necessity" is not one which can be defined by rigid formula, but must take its meaning from the factual environment of the individual case. It bears a close analogy to the phrase "ordinary care" in the field of torts which creates a broad standard without prescribing, because it would be impossible to do so, an inflexible rule of application that would fit every situation.

Viewed through this concept the fallacy of the appellants' assertion that in disposing of railroad applications for motor carrier certificates the Commission has adopted criteria differing from those employed for other applicants comes into clear focus. In both instances the standard is the same, viz., public convenience and necessity, and in both classes of investigation the same factors have been considered and evaluated. If a different conclusion results the basis for the difference is to be found in distinction of fact, not in variance in the governing criteria.

The appellants' charge that the criteria differ in railroad and other motor carrier proceedings is based upon the assertion that when a railroad is an applicant the Commission "totally disregards the adequacy of existing motor carrier service, totally disregards the willingness and ability of existing motor carriers to coordinate their motor carrier operations and services with the railroad, and totally disregards the effect of

new and additional competition on the economic stability of existing independent common carriers by motor vehicle." From this catalogue of sins of omission it is evident that the appellants have disregarded everything that the Commission has scrupulously taken into account.

With respect, first, to the adequacy of existing motor carrier service the Complaint manifestly cannot proceed on the theory that the Commission erred in failing to find the existence of other motor carriers in the involved territories, for the report in 17 M. C. C. 413 (R. 81) specifically stated that "in most instances there is adequate motor carrier service over the considered routes." (R. 104).* The contention must therefore be that the availability of other services has not induced the Commission to deny the certificates, and in that posture it merely takes exception to a conclusion for which there is such an abundance of supporting evidence as to leave no room for reasonable doubt. The motor carrier service of the Receivers, as the Commission found (34 M. C. C. 441, 443-4, R. 151, 155), "has been and will continue to be of a different character from that performed by protestants or motor carriers generally." In this view the Commission finds unimpeachable corroboration from the decision of the Supreme Court in *Thomson* v. *United States*, 321 U. S. 19, 88 L. Ed. 326, 64 Sup. Ct. Rep. 392, wherein the Court, considering railroad motor carrier operations identical in character with those of the Receivers, said (U. S., p. 21, L. Ed., p. 327, Sup. Ct. Rep., p. 393) that they were

*It is perhaps unnecessary to state that the motor carrier service to which the Commission refers is that of existing operators who, as will presently appear, cannot satisfactorily furnish the highly specialized form of service here involved.

> "merely a new method of carrying on part of its [the railroad's] all rail freight business in which it had been engaged for years"

and further observed (U. S., p. 24, L. Ed., p. 329, Sup. Ct. Rep., p. 395):

> "As an integral and essential part of this service tendered by the railroad motor vehicle transportation between certain stations is provided. It is completely synchronized with the rail service, *and has none of the elements of an independent service offered on behalf of motor vehicle operators.*" (Italics supplied.)

Because of the different and highly specialized nature of the Receivers' operations the Commission found that existing motor carriers could not themselves effectively perform it. This conclusion was not reached in a vacuum, or without adequate factual basis. On the contrary the Commission gave the most studious consideration to the vigorous assertions of protestant motor carriers that they should be allowed to function in this capacity, and after exhaustive analysis and discussion* rejected the contention, holding (28 M. C. C. 21):

> "We find that the useful public service which would be served by coordination of rail and truck service could not be served as well by existing motor carriers * * *."**

From the foregoing it is clear beyond dispute that the Commission, far from ignoring the adequacy of

*28 M. C. C. 5, pp. 15-21, R. 123-129. See also *Kansas City Southern Transport Co. Common Carrier Application*, 10 M. C. C. 221, 235, 236.

**The same conclusion has been reached in many other decisions. See cases cited in footnote, p. 50.

existing motor carrier service, has accorded the existence of such service the most scrupulous attention. Having done so it has, for convincing reasons, decided that this factor affords no ground for denying the public the benefit of the proposed service, a conclusion for which this Court will not substitute a different conclusion of its own.

What has just been said obviously answers the second and corollary indictment that the Commission has disregarded "the willingness and ability of existing motor carriers to coordinate their motor carrier operations and services with the railroad." As previously observed* we have not questioned the *willingness* of the appellants to arrogate to themselves this particular part of the railroad's business. *Willingness*, however, does not connote *ability*, and as to the latter the Commission has found against the appellants on a record which plainly supports its decision.**

The third and final specification supporting the "criteria" complaint is that the Commission has disregarded "the effect of new and additional competition on the economic stability of existing independent common carriers by motor vehicle." In our review of the testimony controverting the appellants' claim that evidence was improperly excluded we have discussed at some length the support in the record for the Commission's finding that the proposed services would not compete with existing carriers.*** Nothing more is needed to demonstrate that this factor was considered, that the Commission's finding was fully warranted by

Ante, p. 49.
**Ante*, p. 50.
***Ante*, pp. 57-59.

the evidence, and that the appellants' position in this respect is without foundation.

From this analysis of the case as it comes to the Court it is plain, as stated at the outset, that what the appellants conceive to be fundamental errors in the criteria employed by the Commission in reaching the ultimate finding of public convenience and necessity are in reality but controlling differences in the factual constituents, differences which have constrained the Commission to reach a conclusion unacceptable to the appellants but unassailable in law. In both classes of proceedings the Commission applies the same basic tests, namely, (1) is there a public need for the proposed service; (2) will it compete prejudicially with existing motor carriers; (3) if so, can the existing operators effectively provide the service? *Pan American Bus Lines Operation*, 1 M. C. C. 190, 203. In the instant case, the Commission, on the basis of adequate evidence, has found that there is public need for the service, that it will not prejudically affect existing motor carriers, and that existing motor carriers cannot effectively provide the service. Thus the foundation for the ultimate finding of public convenience and necessity rests upon application of the identical criteria used in all cases, whether the applicant be a railroad or an independent motor carrier.*

The decisions principally relied on by the appellants as sustaining their position in this respect re-

*The statement in the appellants' brief (p. 7) that "The court [below] concluded that * * * the Commission was warranted in departing from the normal criteria of public convenience and necessity" is incorrect. In this respect the court said: "There is ample warrant in the record for the Commission's finding that, *under proper criteria reasonably applied*, public convenience and necessity would be best served by granting these certificates * * * to the Seaboard." (Italics supplied.)

main for considerations. These are *Eastern-Central Motor Carriers Association* v. *United States*, 321 U. S. 194, 88 L. Ed. 431, 64 Sup. Ct. Rep. 499; *United States* v. *Carolina Freight Carriers Corporation*, 315 U. S. 475, 86 L. Ed. 971, 62 Sup. Ct. Rep. 722; *Yonkers* v. *United States*, 320 U. S. 685, 88 L. Ed. 241, 64 Sup. Ct. Rep. 327; and *New York Central R. Co.* v. *Public Utilities Commission*, (1931) 123 Ohio St. 370, 175 N. E. 596.

In the *Eastern-Central Motor Carriers Association* case this court reviewed an order of the Commission (34 M. C. C. 641) rejecting tariffs filed by a group of motor carriers publishing a scale of rates on floor-covering lower for weights exceeding 30,000 pounds than for volumes between 20,000 and 30,000 pounds. The Commission had disapproved the rates because loads in excess of 20,000 pounds would require more than one vehicle, the carriers had failed to show a reduction in the cost of handling the larger volumes, and consequently the resultant discrimination against the smaller shipper was unreasonable. In thus tying the permissible rate differential solely to the volume factor the Court held that the Commission adopted a policy which made reduction in cost of handling the sole criterion of decision, and wholly disregarded the possible prejudicial effect of such a policy on motor carriers in their competition with other forms of transportation, with "consequences affecting not only the carriers but the public interest as well." This, the Court said (321 U. S. 203, 88 L. Ed. 436, 64 Sup. Ct. Rep. 504.

> "is not merely to adopt 'a policy of administration' * * *; but rather to adopt, as a rule of law, the principle that only upon a showing of

reduction in operating costs may a volume minimum rate be found reasonable and not unduly discriminatory."

That there is no parallel between that case and the one before the Court is obvious. There the Commission, in determining the propriety of the rates in issue, had admittedly ignored the effect of its decision upon the competitive status of motor carriers. Here that factor, as we have repeatedly demonstrated, was accorded the most meticulous consideration. There the Commission, in excluding competitive conditions as immaterial, had proceeded upon an erroneous "rule of law." In the instant case no such charge can be sustained, for the Commission has taken into account every element essential to a determination of the ultimate questions before it. In short, whereas, in the *Eastern-Central* case the Commission misconstrued its governing stautory mandates, in the instant case only a proper exercise of the Commission's administrative functions is involved, and it has thus confined its action to the province committed to its discretion by law.

The *Carolina Freight Carriers Corporation* case is similarly distinguishable. The Commission had granted a "grandfather clause" certificate* authorizing operation as a common carrier by motor vehicle between points in designated territories and over irregular routes. It had, however, limited the commodities which might be transported to those which had been carried in substantial amounts and with a degree of regularity both before and after the grandfather clause date, excluding articles which had been handled before

*49 U. S. C. A., Sec. 206(a).

but not after that date. This the Court held to be error. It explained that the statutory definition of a common carrier by motor vehicle is one who "undertakes * * * to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes."* The common carrier status of the applicant having been established, the test of commodities which it is entitled to handle is the scope of its undertaking. When dealing with regular route operators the Commission did not measure this scope by the service actually rendered on and since the statutory date. In excluding from the rights granted irregular route applicants those commodities which had been carried before but not after the grandfather clause date the Commission erroneously regarded continuity of handling as the sole measure of the applicant's undertaking, and furthermore established "a different test for commodities which may be carried by irregular route operators than for commodities which may be carried by regular route operators." This distinction in treatment between the two classes was "erroneous as a matter of law." (315 U. S. 485-6, 86, L. Ed. 981, 62 Sup. Ct. Rep. 728).

Again it is clear that the basis of the Court's criticism of the Commission's action in the *Carolina Freight Carriers* case is absent here. In defining the term "common carrier by motor vehicle" the Act prescribes a definite standard by which the rights to which an applicant qualified under the grandfather clause is entitled are to be determined, without distinction as between regular and irregular route operators. This

*49 U. S. C. A., Sec. 303(a)(14).

statutory standard is the scope of his undertaking, which in turn is to be measured by the extent to which he holds himself out to serve the public. That he has not in fact transported certain commodities or groups of commodities subsequent to the grandfather clause date does not of itself exclude such commodities from the scope of his undertaking, for, as the Court said (315 U. S. 484, 86 L. Ed. 980):

> "the natural and normal course of his business may reveal a continuous undertaking to transport any or all commodities."

Hence, in arbitrarily excluding from the granted rights those commodities which had not been transported after the grandfather clause date—a standard which was not enforced against regular route operators—the Commission misconstrued the Act and committed error as a matter of law.

In the pending case, on the other hand, the Commission, mandated only by the requirement that a certificate shall issue upon a finding of public convenience and necessity, has examined the facts, considered every element appropriate and relevant to the criterion thus imposed, and, with ample supporting evidence, has concluded that the certificate should issue. In so doing it has but exercised the administrative duties which have been confided to it and has observed the same standards as are applied in similar proceedings. Its action is therefore legally unassailable.

The last of the decisions of this Court mainly relied on by the appellants as sustaining the "criteria" argument is *Yonkers* v. *United States*, 320 U. S. 685, 88 L. Ed. 241, 64 Sup. Ct. Rep. 327. Paragraph (22)

of Section 1 of the Interstate Commerce Act withholds from the Commission power to authorize abandonment "of street, suburban or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation." The Commission had approved the abandonemt of an electric branch of the New York Central Railroad Company without finding whether is was operated as a part of its steam railroad. The Court held that this omission was fatal to the order. In so doing it explained that the exemption of this type of line from the Commission's abandonment authority reflected "a Congressional policy of reserving exclusively to the states control over that group of essentially local activities," that this policy "required the Commission to show meticulous respect for the interests of the States" by making the findings essential to its jurisdiction, and that although the reviewing court might itself make that determination initially it should refuse to do so without the assistance of the Commission's "expert judgment on a knotty phase of a technical subject."

Commenting on this decision the appellants claim that there is a parallel between the Commission's failure to observe a statutory mandate "in cases involving national and local interests, on the one hand, and cases involving the interests of competing transportation agencies, such as railroads and motor carriers."* The analogy is obscure. We are not told in what respects the Commission has here failed to make essential findings or how otherwise the doctrine of the *Yonkers* case is cognate. Since it determines the narrow question whether an affirmative finding by the Commission of a

*Appellants' brief, pp. 43, 44.

jurisdictional fact prescribed by statute is essential to the validity of a Commission order, and the basis of the Commission's jurisdiction in the instant case is not and cannot be questioned, the *Yonkers* decision manifestly has no application here.

The appellants further cite *New York Central R. Co.* v. *Public Utilities Commission*, (1931) 123 Ohio St. 370, 175 N. E. 596. There the railroad had applied for a certificate under the state law for authority to operate a motor carrier service over a regular route between Cleveland, Toledo and Danbury, Ohio. The evidence showed, and the Public Utilities Commission found, that all points on the proposed route* were served by existing carriers. The Commission denied the application and on review the Court sustained the decision. It said that the Ohio law, as construed by the Court, precluded the granting of a certificate unless it appeared that another motor carrier, if any, holding a certificate covering the same route is not rendering adequate service, and is not able, ready and willing to provide the additional service. Since the Commission's findings negatived these essential prerequisites of public convenience and necessity, the issuance of the certificate was not warranted.

In appraising this decision it is to be first observed that the Ohio statute, as construed by the Court, differs from the corresponding provisions of Part II of the Interstate Commerce Act in that it conferred upon existing operators a preemptive right to provide all service on the authorized routes provided they were ready, able and willing to do so, regardless of whether the proposed additional service was competitive with

*With four exceptions as to which no evidence was offered.

established motor carriers. This rigid restriction finds no counterpart in the Interstate Commerce Act, and thus the State Commission was functioning within a far narrower sphere of administrative discretion than does the federal tribunal.

Aside from this distinction in the respective laws, however, it is important to note that there the Commission had found that the existing carriers were ready, able and willing to render the additional service. Whether this finding was predicated upon the fact that the railroad was proposing a type of operation so broad in scope and purpose that it was similar in all respects to that of existing motor carriers, or merely reflects a difference of opinion between the state and federal Commissions as to the ability of such carriers to provide the more limited auxiliary service here involved, is not disclosed by the opinion, nor is it of consequence. The essential distinction is that in the Ohio case the state Commission decided that existing carriers could perform this service whereas here the federal Commission, on adequate evidence, reached an opposite conclusion.

If we disregard the distinguishing features of the Ohio case to which we have just pointed, and assume that it supports the position for which it is cited, it by no means represents the contemporary attitude of state courts toward this type of service. In *Thomson* v. *Iowa State Commerce Commission*, (1944) 15 N. W. 2d 603, the Supreme Court of Iowa has decided a case so strikingly parallel in its factual background to that here before the Court that we discuss it at some length.

The Trustee for the Chicago & Northwestern Rail-

way Company had there applied to the Iowa State Commerce Commission for a certificate authorizing intrastate operations as a motor carrier over ten routes between fixed termini. The railroad proposed identically the same type of supplemental or auxiliary service as the Receivers provide. The application was opposed by virtually all existing motor carriers on the principal ground that the railroad's purpose could be accomplished by those already holding operating rights. In a decision by two of the three members, and over the vigorous dissent of the remaining member, the application was denied. The railroad appealed to the county district court on the ground that the evidence before the Commission failed to support its findings and conclusions. The opposing motor carriers intervened in support of the Commission, again asserting that the proposed service would duplicate their own. The lower court reversed the Commission and was sustained on appeal to the State Supreme Court.

The nature of the proposed service, identical with those here involved, was described by the appellate court in the following passage from the opinion of the district court (15 N. W. 2d 604, 605):

> "Applicant merely proposes to improve an existing service through the utilization of motor vehicles in rendering a service which will be auxiliary to, supplemental of, and coordinate with the rail service. Applicant does not propose to invade territory of any other carrier. All of the points are stations on the rail line which applicant has served for years and is under obligation to continue to serve. Applicant merely proposes to improve that service in an endeavor to retain existing patrons, offering

them a service more in keeping with their requirements under existing merchandising methods. To say that such service will adversely affect the operations of existing motor carriers is to admit superiority of the proposed service which protestants strongly deny."

The Court then quoted with full approval the following excerpt from the opinion of the dissenting Commissioner (pp. 607, 608):

"It is my view that an approval of the application as presented in this case would have been an approval of a strictly limited type of service. *The service proposed is really a sequence of operations, each to be performed within a particular division, independently for all practical purposes, of the motor operations within other divisions.* As far as exclusively motor operations are concerned the only competitive effect of the proposed service would be in connection with short intra-division hauls. Revenue from such hauls, in comparison with protestants' total revenues, is of minor importance. As a practical matter, I believe, the substantial part of operations under applicant's time schedule would necessarily have been confined to the movement of freight previously moved by rail or destined for further rail movement. (Italics supplied.)

* * * * * * *

"It is my thought that the proceedings actually before us have required only a consideration of a supplementary and auxiliary rail service—in a manner of speaking, a type of extended pick up and delivery service. As to the effect of a more unlimited service on the public welfare, such should properly have been left

for consideration at such future time as applicant might propose an extension of operation.

* * * * * *

"I do not mean to say by the foregoing that it is my view that this Commission should depart at this time from its previous policy of denying applications for competitive service in the ordinary situation. Had applicant in this proceeding been an independent motor carrier, offering no better or different service than that presently performed by protestants, I should have joined with the majority in denying this application for want of public convenience and necessity. My previously expressed views are simply to the effect that this Commission is bound by no rule of law or even by any rule of stated policy invariably to reject an application for competitive service. It is my position that in a proper case such service may and should be permitted, and it is my further position that this is a proper case."

The appellate court sustained the lower court's reversal of the decision of the majority of the Commission, approving the views of the dissenting Commissioner just quoted and adding the following observations of its own (p. 608):

"As heretofore pointed out, the decision of Commissioner Richardson recognized that there was substantial evidence herein to sustain the contentions of the railroad. Of this there can be no doubt. The trial court was right in so holding. In determining whether the Commission or the trial court was right in deciding the effect to be given the record made by the resisting carriers, *it is vitally important to bear in*

mind that the service the railroad seeks authority for is merely auxiliary to, supplemental of, and coordinated with its rail service. Were this an application by an ordinary truck operator to merely duplicate existing motor carrier service, there is little doubt that the denial of the application was adequately supported by the record. It is only when proper emphasis is placed upon the special kind of service and its limitations as such that the erroneous character of the commission's decision becomes apparent." (Italics supplied.)

Commenting on the protestant motor carriers' insistence that they be permitted to provide the proposed service the Court said (p. 609):

> "The protesting motor carriers furnish no transportation by rail. No one of them is authorized to operate over the entire territory involved. Collectively, they do serve the territory as motor carriers only. But they do not and cannot furnish the type of service here proposed. It could be supplied only through agreements with the railroads. Most, if not all, of the intervenors offered assurances that they would be willing to work with the railroad. The testimony of the railroad's witnesses was that no satisfactory arrangement had been worked out and that none was possible because so many conflicting details in the operations of so many systems made proper coordination impossible."

The court then referred to a multitude of decisions of the Interstate Commerce Commission granting certificates to railroads pursuant to the Federal Motor Carrier Act, including specifically the initial report in the proceedings here involved (17 M. C. C. 413, R. 81),

concluding with the following unqualified approval of the principles upon which the Commission has proceeded (pp. 610, 611):

> "Of course, the decisions of the Interstate Commerce Commission are not binding precedents upon this court. However, the principles, announced and applied in the foregoing decisions, are so eminently fair, sound, just and reasonable that we have no hesitancy in adopting them as tenets which should be applied in determining whether the Commission should have issued a certificate of public convenience and necessity under the facts herein. We have carefully examined the numerous cases, cited by the Iowa Commission. None is in point or persuasive and certainly none is in any way decisive or controlling. The length of this opinion forbids a detailed analysis thereof. We are satisfied that, when the Iowa Commission shut its eyes to the basic principles, repeatedly recognized and applied by the Interstate Commerce Commission, it thereby disregarded the substantial rights of the applicant railroad. Its decision became manifestly unsound, unfair, arbitrary and unreasonable."

We have discussed this state court opinion extensively because it meets and, with exceptional clarity and penetration, disposes of every ground advanced in support of the "criteria" argument of the appellants. In a case which manifestly parallels that here before the Court so closely as to be incapable of tenable distinction it at once repudiates the charges that the Commission has failed to give proper consideration to the essential elements of public convenience and necessity and unequivocally approves the rationale of the Com-

mission's conclusions. That its views are in accord with those of this Court is plainly indicated in the decision in *Thomson* v. *United States*, 321 U. S. 19, 88 L. Ed. 326, 64 Sup. Ct. Rep. 392, affirming the basis of the Commission's finding that, because of essential differences in the nature of the motor carrier services of railroads and independent motor carriers, they would not compete. When to the force of these considerations is added the doctrine of *McLean Trucking Co.* v. *United States*, 321 U. S. 67, 88 L. Ed. 358, 64 Sup. Ct. Rep. 370, committing to the experienced judgment of the Commission the evaluation and adjustment of all competitive features in determining where the public interest lies, all doubt of the validity of the Commission's actions vanishes.

We would be remiss if, before concluding our consideration of this aspect of the case, we failed to advert to one other ground urged by the appellants to support their position that different criteria have governed the Commission's determination of the two classes of motor carrier applications. It is said that no evidence can persuade the Commission to deny a certificate to a railroad applicant, and that the result is tantamount to a practice which permits railroads to secure motor operating authority virtually as a matter of right.* It would perhaps suffice, as an answer to this charge, that the instant case must be decided on its own merits, and that if the appellants cannot prevail on the record here they are not aided by recourse to what the Commission has done in other proceedings. The charge, however, is so sweeping an indictment of the policy pursued by the Commission in its treatment of the

*Appellants' brief, pp. 34, 70, 110.

railroad cases that comment is required, if only to repel the implications of silence.

With very few exceptions the Commission's grant of authority to railroads or their subsidiaries to operate as motor carriers has been limited to a service which is auxiliary to or supplemental of that of the railway, in other words to provide an "improved rail service through the use of trucks instead of trains as a *means* of fulfilling the Railway's undertaking to transport." *The Texas and Pacific Motor Transport Common Carrier Application*, 41 M. C. C. 721. The restriction thus imposed is usually implemented through the imposition of one of two types of conditions, i. e., (1) requiring that the trucks be used for the handling of only that traffic which receives a prior or subsequent rail haul, or (2) designating key stations which, through segmentation, prevent the use of motor vehicles in through service between or beyond principal points. Likewise the routes to be followed parallel the railroad, and the points to be served are confined to the rail stations. If with this limited operation it is established that beneficial improvements in the service rendered by the railroad can be effected the Commission in many cases has found the proposal to be required by public convenience and necessity and issued the requested certificate.

But beyond this the Commission has consistently declined to go. When from time to time it has been urged to permit railroads to provide an unrestricted highway service disassociated from their rail operations and substantially similar to that furnished by independent motor carriers, it has refused to do so. It has explained that the coordination of rail and highway

operations provides a new and different character of service which neither the railroad nor the trucks alone can supply, but that where existing motor carriers are already adequately operating there is no need for additional like service having no close relation to rail operations. *Kansas City Southern Transport Co. Common Carrier Operation*, 10 M. C. C. 221, 238.

That this practice* is not a mere theoretical abstraction but is affirmatively and aggressively enforced by the Commission is evidenced by recent decisions. In *Campbell Sixty-Six Express, Inc.* v. *Frisco Transporation Co.*, 43 M. C. C. 641, the Commission considered the complaint of a number of independent motor carriers protesting against the operations of a motor carrier subsidiary of the St. Louis-San Francisco Railway Company on the ground that in collaboration with the railway the motor carrier was performing a direct common carrier highway service unrelated to the operations of the proprietary railroad, in violation of its certificated rights. The nature of the defendant's operation was not disputed, the defense directing itself to a showing that the service as provided was beneficial to the public. Finding that the defendant motor carrier's operating rights were for the most part subject to the condition that the service to be rendered should be auxiliary or supplemental to the train service of the railroad, and that in failing to coordinate the two operations the defendant was exceeding its authority, the Commission reopened the proceedings to determine what conditions should be imposed to insure that the character of service rendered should conform to the limited authority contained in the certificates.

*Whether as a matter of transportation economics the Commission's restrictive practice is sound may be disputable. But that question is not here presented and is therefore beyond the purview of this discussion.

Similar action was taken by the Commission in *Frisco Transportation Co. Extension of Operation*, 41 M. C. C. 266; *Texas & Pacific Motor Transport Co. Common Carrier Application*, 41 M. C. C. 721, and *The Rock Island Motor Transit Co. Extension of Operations*, 43 M. C. C. 470.

It is thus apparent that the Commission's approach to the intricate problems posed by the efforts of the railroads to improve their service by utilizing highway operations has been marked by the utmost caution to safeguard the existing motor carriers against unnecessary encroachment into a field which they already occupy, and to eliminate from this process of modernization any undue competitive impact upon the independent motor carrier industry. When the railroads have confined their efforts to means essential to meet a demonstrated public need they have been approved. When this objective has been overreached the Commission has imposed restraints appropriate to confine the authority granted within limits which it considers proper.

With the practice of the Commission in these cases thus oriented, the appellants' charge that it has been arbitrary and capricious in that it grants to railroads motor operating authority virtually as a matter of right is seen to be without foundation. The caution with which the Commission has permitted the railroads to engage in highway service, the rigid restrictions with which it has surrounded their authority to do so, and the scrupulous protection which it has extended the independent carriers, display a discrimination in the discharge of its duties in this field of administrative responsibility which is beyond all tenable criticism.

The attack upon the Commission's orders on the ground that the Receivers' motor operations will tend to create a monopoly in the transportation field is wholly without substance.

In their complaint (R. 11, 18, 21) the appellants allege that the action of the Commission in permitting the Receivers and other railroads to engage in highway operations will tend to restrain competition and create monopoly in the motor carrier field. The averments in this respect are general and the supporting arguments obscure, but as we understand the appellants' position it amounts to nothing more than a professed apprehension that if railroads are permitted to engage in highway service they will, through a process of erosion, eventually drive the independent carriers from the field.

To this position, we submit, the decision of this Court in *McLean Trucking Co.* v. *United States*, 321 U. S. 67, 88 L. Ed. 358, 64 Sup. Ct. Rep. 370, although arising under Section 5 and not Section 205, of the Act, is a conclusive answer. In that case the Commission had authorized the Associated Transport Company to acquire control of eight independent motor carriers collectively serving the Atlantic seaboard. The order of approval was attacked on the principal ground that the Commission gave insufficient weight to the "prohibitions and policies of the anti-trust laws." The complainants contended that although Section 5 of Part I of the Act exempts unifications from the *prohibitions* of those laws their *policy* was not suspended, and that the Commission should have withheld its approval unless satisfied that the proposal would not run counter to this policy, viewed independently of the

exemption contained in Section 5. Recognizing that this contention, taken "in its full sweep," would in effect nullify the exemption, the Court rejected it categorically.

But taken in a more limited scope, i. e., that the exemption provision was not a warrant to the Commission to ignore wholly the policies of the anti-trust laws in exercising its powers under Section 5, the contention was said "to pose a problem of accommodation of the Transportation Act and the anti-trust legislation." The duty of the Commission in meeting this problem is described in language which so aptly disposes of the appellants' position with respect to the monpoly feature of the instant case that we quote liberally from the opinion:

> "To secure the continuous, close and informed supervision which enforcement of legislative mandates frequently requires, Congress has vested expert administrative bodies such as the Interstate Commerce Commission with broad discretion and has charged them with the duty to execute stated and specific statutory policies. That delegation does not necessarily include either the duty or the authority to execute numerous other laws. Thus, here, the Commission has no power to enforce the Sherman Act as such. It cannot decide definitely whether the transaction contemplated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act. The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems. That legislation constitutes the immediate frame of reference within which the Commission op-

erates; and the policies expressed in it must be the basic determinants of its action." (321 U. S. 79-80): * * *

"The history of the development of the special national transportation policy suggests, quite apart from the explicit provisions of Section 5(11) that the policies of the anti-trust laws determine 'the public interest' in railroad regulation only in a qualified way. And the altered emphasis in railroad legislation on achieving an adequate, efficient, and economical system of transportation through close supervision of business operations and practices rather than through heavy reliance on the enforcement of free competition in various phases of the business, cf. *New York Cent. Securities Corp.* v. *United States*, 287 U. S. 12, 53 S. Ct. 45, 77 L. Ed. 138, has its counterpart in motor carrier policy. The premises of motor carrier regulation posit some curtailment of free and unrestrained competition. The origins and legislative history of the Motor Carrier Act adequately disclose that in it Congress recognized there may be occasions when 'competition between carriers may result in harm to the public as well as in benefit; and that when a [carrier] inflicts injury upon its rival it may be the public which ultimately bears the loss.' Cf. *Texas & P. R. Co.* v. *Gulf, C. & S. F. Co.*, 270 U. S. 266, 277, 70 L. Ed. 578, 46 S. Ct. 263." (321 U. S. 83-84). * * *

"In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation, and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the

over-all transportation policy. Resolving these considerations is a complex task which requires extensive facilities expert judgment and considerable knowledge of the transportation industry. Congress left that task to the Commission 'to the end that the wisdom and experience of that Commission may be used not only in connection with this form of transportation, but in its coordination of all other forms.' 79 Cong. Rec. 12,207. "The wisdom and experience of that Commission" not of the courts must determine whether the proposed consolidation is 'consistent with the public interest.' Cf. *Interstate Commerce Commission* v. *Illinois C. R. Co.*, 215 U. S. 452, 54 L. Ed. 280; *Pennsylvania Co.* v. *United States*, 236 U. S. 351, 35 S. Ct. 370, 59 L. Ed. 616; *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, 60 S. Ct. 931, 84 Ed. 1243; *Purcell* v. *United States*, 315 U. S. 381, 62 S. Ct. 709, 86 L. Ed. 910. If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported by evidence, it is not our function to upset its order." (321 U. S. 87, 88).

That the order reviewed in this decision was entered in a proceeding arising under Section 5 of Part I of the Act and not Sections 206 and 207 of Part II strengthens rather than weakens its application to the instant case. Section 5 affords relief from the restraint of the anti-trust laws in respect, *inter alia*, of motor carrier unifications, whereas no such relief is provided as to motor carrier operations authorized pursuant to Section 207. Accordingly, while the Commission's approval of unifications under Section 5 effectively forestalls enforcement of the anti-trust laws, if, as the

result of the issuance of a certificate under Section 207, monopolistic tendencies develop the Department of Justice remains free to take appropriate action. Hence, a solicitous regard for the public interest demands even more careful scrutiny by the Commission of the competitive effect of a unification proposal under Section 5 than of a certificate application under Section 206; and if in a unification case the appraisal of the "effects of the curtailment of competition" is within the province of the Commission, *a fortiori* the range of its discretion in certificate proceedings is equally broad.

We have heretofore examined the record to point to the abundant evidence supporting the Commission's findings in three reports that the Receivers' motor operations would not adversely affect the operations of existing motor carriers, or restrain competition in the motor carrier field.* We have also adverted to the judicial approval of the basis of those findings evidenced in *Thomson* v. *United States*, 321 U. S. 19, 88 L. Ed. 326, 64 Sup. Ct. Rep. 392. Nothing more is needed to demonstrate that the Commission, in full conformity with the standards imposed upon it by the *McLean* case, has estimated the scope and appraised the effects of the Receivers' auxiliary service upon existing carriers, and has found, with ample support of record, that they would not run counter to the policies of the anti-trust laws. In this setting the Commission's conclusion is binding upon a reviewing Court. *McLean Trucking Co.* v. *United States*, *supra*, 321 U. S. 67, 88.

Ante, pp. 57-59.

The underlying objective of this suit is to exclude railroads from the highways for any purpose, however limited, and to establish the commercial use of the highways as the exclusive prerogative of non-rail affiliated motor carriers. In this posture the appellants are opposed by the National Transportation Policy and the legislative history of the Motor Carrier Act.

The vital role played by the transportation system of the nation in the development of its economic life has throughout virtually the entire history of its development been guided by public control. The dominant position occupied by the railroads from early days until comparatively recent times directed initial regulatory efforts primarily to the prevention of abuses which might grow out of their monopolistic position.

Beginning with the Transportation Act of 1920, however, restraint as the principal objective of regulation, yielding to the presssing conditions within the industry, was tempered with a new policy which accorded recognition to the need for building an efficient system of railways for the handling of the nation's traffic. *Dayton-Goose Creek R. Co. v. United States*, 263 U. S. 456, 478, 68 L. Ed. 388, 398, 44 Sup. Ct. Rep. 169, 172. In administering this policy the Commission was to give principal emphasis to the "adequacy of transportation service, * * * its essential conditions of economy and efficiency, and * * * appropriate provisions and best use of transportation facilities * * *." *New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 25, 77 L. Ed. 138, 146, 53 Sup. Ct. Rep. 45, 48.

Shortly thereafter the emergence and development of other agencies called for an extension of the regulatory field. Highway carriers were playing an increasingly important part in the transportation economy. First the subject of state regulation, their activities in the interstate field resulted in the enactment of the Motor Carrier Act of 1935*, and later air carriers were brought under federal regulation by the Civil Aeronautics Act of 1938.**

The growing ramifications of the national transportation system inevitably brought to the fore increasingly complex problems of administration of the regulatory laws. In confiding to the Commission the responsibility for the regulation of both railroads and motor carriers Congress recognized that potential conflicts of interest between those two agencies could best be composed, and the expressed purpose of developing and coordinating a national transportation system by, among other means, rail and highway could be most effectively accomplished, by committing their supervision to the same tribunal, guided by the basic principles which have been enunciated in the National Transportation Policy. *McLean Trucking Co.* v. *United States*, 321 U. S. 67, 82, 88 L. Ed. 358, 366, 64 Sup. Ct. Rep. 370, 378.

Into this policy the appellants, by the objectives of this suit and the theories advanced in its support, would read an interdiction of the use of the highways by railroads for any purpose, however limited, whenever in the area to be served other motor carriers are in operation. For such a sweeping proscription neither the

*49 Stat. 543, c. 498.
**52 Stat. 973, c. 601.

language of the Act nor its legislative history furnishes any possible warrant. The National Transportation Policy, as stated above, was directed in terms to the broad principles which should govern the Commission in "a fair and impartial regulation of all *modes* of transportation," (italics supplied) and not to the agencies which should be permitted to utilize such modes. That railroads were not to be excluded from the field of motor transport is not only manifest from the absence in the language of the National Transportation Policy of any permissible inference to that effect and from the provisions of Section 5(2)(b)* which affirmatively recognize that Congress contemplated railroad participation in highway transportation,** but is indisputably clear from the legislative history of the statute.

The origin and background of the Motor Carrier Act of 1935 are described in the following passage from page 2 of Report No. 482 of the Senate Committee on Interstate Commerce, 74th Congress, dated April 11, 1935, accompanying S. 1629 which was enacted into Law:***

> "In 1933 the Congress, recognizing the existence of an emergency in transportation, enacted the Emergency Railroad Transportation Act, 1933, providing among other things, for a Federal Coordinator of Transportation * * *. Since June, 1933, the Coordinator has made elaborate surveys and studies of the need for regulation of transportation agencies. In his

*49 U. S. C. A., Sec. 5(2)(b).

**Cf. *Thomson* v. *United States*, 321 U. S. 19, 88 L. Ed. 326, 64 Sup. Ct. Rep. 392, where it was held that the railroad rather than the independent motor carriers was entitled to the requested certificate.

***Public—No. 255,—74th Congress, approved August 9, 1935.

report of March 10, 1934 (S. Doc. 152), he recommended, among other things, regulation of motor carriers comparable in large measure to that proposed in the bill herewith reported. This latter bill was proposed in the Coordinator's report for 1934 (H. Doc. 89), as the result of additional study, experience, and exchange of ideas between the Coordinator, the shippers, and the motor-carrier industry."*

The bill as finally enacted therefore reflected the views of the Commission and the Coordinator formed as the result of exhaustive investigations of the entire field of transportation. The attitude of the Commission toward railroad operation of highway carriers is stated in an early report of the Commission (1928), *Motor Bus and Truck Operation*, 140 I. C. C. 685, where the Commission concluded (p. 745):

> "Railroads, whether steam or electric, and water carriers, subject to the interstate commerce act, should be authorized to engage in interstate commerce by motor vehicles on the public highways, and thereafter such service should be subject to the provisions of the interstate commerce act, with the possible exception of section 15a, and legislation supplementary thereto. To the extent that a certificate of public convenience and necessity is an antecedent to the operation of other common-carrier motor vehicles, steam and electric railroads, and water carriers, subject to the interstate commerce act should be required to obtain a certificate of public convenience and necessity in like manner."

*Of like import is Report No. 1645 of the House Committee on Interstate and Foreign Commerce, 74th Congress, which accompanied S. 1629, when the bill was before the lower House. See page 2 of that Report.

Mr. Eastman, Coordinator of Transportation, testifying at the hearings before the Senate Committee on Interstate Commerce on S. 1629, 74th Congress, 1st session; Part I, p. 85, said:

> "Senator Couzens. I understood you to say yesterday that this bill provides for a coordination by one agency of the several means of transportation, such as a railroad, a bus line, a truck line, a water line, and so on. Is that true?
>
> "Mr. Eastman. The bill permits a railroad to own these other forms of transportation or acquire them with the approval of the Commission, except competitive water lines.
>
> "Senator Couzens. It was suggested to me last night by an extensive truck carrier that after they acquired this franchise or certificate of convenience and necessity they would haul the freight by the railroads because of their greater interest in the railroad operation. Do you think that is a point to be considered?
>
> "Mr. Eastman. My own personal opinion is that the railroads are going more and more to find that they can use trucks and busses to advantage in connection with their own service—supplement it and substitute for it where they can do the job better than the rails can do it. As a matter of fact, as shown in this report of last year, there are a great many instances now where railroads do control companies operating trucks or busses. For example, the New England lines, both the Boston & Maine and the New Haven have motor transportation companies which operate trucks and busses extensively through New England, either to supplement their own service or as a substitute for it in certain cases."

That the bill considered by the Committees and passed by Congress should be read and interpreted to reflect the views of the Commission and the Co-ordinator set forth above and, moreover, had the approval of the appellants here, is evident from Senator Wheeler's statement in the Senate sponsoring the legislation. See Congressional Record, 1935, Vol. 79, Part 5, pp. 5650-1.

In their attack upon the orders of the Commission here involved the appellants, as we have repeatedly stated, do not and cannot question the sufficiency of the record to sustain the Commission's findings that the proposed operations would accomplish beneficial results which meet a public need and demand. Their challenge resorts rather to procedural and technical objections. These, we submit, have been demonstrated to be so tenuous that it is impossible to escape the conviction that, though perhaps clothed in more plausible form, the underlying objective of this suit is to exclude railroads from the highways for any purpose, however limited. In other words the appellants seek, by invoking judicial intervention in an inherently administrative problem, to establish the commercial use of motor vehicles as the exclusive prerogative of non-railroad affiliated motor carriers. The genesis, the legislative history and the language of the Motor Carrier Act which we have just discussed reveal that in this effort they are in direct conflict with the purpose and intent of Congress.

Relief should be denied by reason of Laches.

With the exception of the Tampa-Sebring route, the Receivers' auxiliary trucking operations were found to be in the public interest and were duly authorized by report and order made and entered on July 11, 1939 (R. 81). The Tampa-Sebring route was authorized by report and order of February 17, 1940 (21 M. C. C. 773). Upon the making of these reports and orders, the appellants' cause of action fully accrued, and from that time forward suit lay to set aside the authorization of the Receivers' operations here complained of. The further proceedings before the Commission did not involve the basic question of public convenience and necessity, but had to do solely with the Receivers' petitions for modification of Condition 3 (R. 136). With respect to this limited subject the Commission said that the requested modifications would in no way change the character of the service the Receivers had therefore been authorized to perform as a motor carrier (34 M. C. C. 441, 443, R. 155), and in reopening the case the Commission, as has been pointed out, confined the pending issue to the sole question whether the key station limitation required modification, and if so in what respects (R. 136).* Every issue presented by the Complaint was open to the appellants when the Receivers' authorities were first granted. Therefore, the accrual of the appellants' right to challenge in judicial proceedings the legality of the Commission's finding that public convenience and necessity warranted authorization of the Re-

*It is important to observe that the substitution of the key station plan for the prior or subsequent rail haul condition was more, not less, restrictive of the Receivers' use of the trucks for long-distance through operations on the highways. For whereas such operations might have been theoretically feasible under the former they were impossible under the latter.

ceivers' auxiliary trucking service dates from the respective reports and orders of July 11, 1939, and April 4, 1940. Yet the Complaint herein was not filed until October 21, 1943, more than four years after the report and order of July 11, 1943, and more than three and one-half years after the report and order of April 4, 1940.

This delay is not susceptible of satisfactory explanation. It is evident that the appellants in fact accepted and regarded the Division 5 reports of July 11, 1939, and April 4, 1940, and the orders made pursuant thereto as the final action of the Commission. We say this because the appellants did not seek timely review of the Division's action at the hands of the full Commission—as they had the right to do—but asked for further hearing only on December 5, 1941 (R. 142), some five months after the Commission had reopened the case, on the petition of the Receivers, for the limited purpose stated, and approximately two and one-half years after Division 5 had acted. In other words, the reports and orders of Division 5 were the subject of no further consideration on the appellants' initiative, but on the contrary were taken by the appellants to have finally disposed of the case as far as the Commission was concerned.

In the interval between the Commission's decision through Division 5 and the institution of this suit, the Receivers, in full reliance upon the unchallenged authorizations permitting their auxiliary trucking services, integrated such services with their all-rail operations and adjusted their entire transportation machine to the phenomenal demands of the war traffic. (R. 196-201). This adjustment to the urgent public necessities

of the time would have been very differently made had there been outstanding a challenge to the legal sufficiency of the Receivers' motor carrier certificates (R. 199). The Receivers and the public they serve, including the Government itself as a large shipper of wartime traffic, have come to rely upon a transportation service of which the motor carrier handling of l. c. l. shipments is an integral and important part.

The foregoing situation is fraught with matters of public, as distinguished from purely private, concern. We therefore submit as applicable here the principle established by *Virginian R. Co.* v. *System Federation No. 40*, 300 U. S. 515, 552, 81 L. Ed. 789, 802, 57 Sup. Ct. Rep. 592, 601, lately reiterated in *Yakus* v. *United States*, 321 U. S. 414, 441, 88 L. Ed. 653, 669, 64 Sup. Ct. Rep. 660, 675, as follows:

> "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved."

The public interest requires the utmost dispatch in cases of this character and the requested remedy should, we submit, be withheld, even on the basis of delay which might perhaps not preclude relief were only private interests involved. This is implicit in the expediting features of the governing statute. 28 U. S. C. A., Sec. 47. Surely, if the trial court is to require the services of three judges and must in every way expedite the case and hear it upon the earliest practicable day, and if this Court is to entertain the case upon direct appeal as of right, the appellants

proceed under a compelling obligation to exercise the utmost expedition if they would secure judicial review. Congress having recognized the public need for expedition and imposed unusual and exacting requirements upon the judiciary in that regard, it is manifest that the courts in turn may and should exact promptness on the part of litigants who would invoke the judicial process of review. The appellants here signally failed to take prompt action. They slept upon their right to seek review before the full Commission for two and one-half years and they inaugurated this proceeding from three and one-half to four years after the challenged operations had been authorized. Hence they should be dismissed by reason of their laches.

VI.

CONCLUSION.

In broad outline the grounds upon which relief is sought in this suit fall into two general categories, one procedural and the other substantive. The former, i. e., the attack upon the composition of the Joint Boards, the complaint that the Commission has failed to require compliance with Sections 217 and 220 of the Motor Carrier Act and the charge that evidence was improperly excluded have been shown, we submit, to be intrinsically without merit and, as to the first two contentions, to have been concluded against the appellants by controlling decisions of this Court.

The substantive grounds advanced by the appellants—the assertion that erroneous criteria have been employed by the Commission and that monopolistic

potentialities have been ignored in deciding the Receivers' application—rest, in the final analysis, upon the single basic premise that the Receivers' auxiliary motor service constitutes an entrance into the independent motor carrier field. The answer lies in the specialized character and function of the operations here under attack. The Receivers' auxiliary trucking service, as the record shows and the Commission has found, is limited to supplementing and improving their operations as a rail carrier in the handling of traffic which is offered and must be accepted for rail transportation. It amounts, in other words, to nothing more than a substitution of a more efficient for a less efficient method of moving the railroad's less-than-carload freight. As such, it does not, and under the restrictions imposed by the Commission, cannot compete on the highways with independent motor carriers. This salient fact meets and disposes of the essential and indispensable premise of the appellants' case.

The judgment of the Court below should be affirmed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 558

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLEES

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the District Court (R. 206) is reported in 56 F. Supp. 394. The reports of the Interstate Commerce Commission (R. 81, 109, 15 are published in 17 M. C. C. 413, 28 M. C. C. 5, and 34 M. C. C. 441, respectively.

JURISDICTION

The final order of the District Court was entered July 21, 1944 (R. 221). The petition for appeal was filed August 18, 1944 (R. 223), and was allowed the same day (R. 223). Jurisdiction of this Court is invoked under the Urgent Defici-

encies Act of October 22, 1913, 38 Stat. 208, 219–221 (28 U. S. C. 47, 47a), and under section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936 (28 U. S. C. 345). Probable jurisdiction was noted November 20, 1944 (R. 1235).

QUESTIONS PRESENTED

The ultimate question here in issue is the validity of certain orders of the Interstate Commerce Commission granting applications made under sections 206 and 207 of Part II of the Interstate Commerce Act for a certificate of public convenience and necessity, subject to prescribed conditions, for operation by the Receivers of the Seaboard Air Line Railway Company[1] as a common carrier by motor vehicle over fourteen different routes generally paralleling its lines of railroad in the States of Virginia, North Carolina, South Carolina, and Florida. The Commission found that the operations proposed, restricted to those which are auxiliary to or supplemental of the rail service of the Seaboard, were required by public convenience and necessity.

Subordinate issues are:

1. Whether the Commission was lawfully empowered to recognize the type of operations authorized as constituting a special type of motor carrier operations.

[1] Hereinafter referred to as "Seaboard".

2. Whether the Commission's ultimate finding that public convenience and necessity required the granting of the applications was based upon proper statutory criteria.

3. Whether such ultimate finding was supported by requisite factual findings.

4. Whether appellants were accorded a full and fair hearing.

5. Whether the Commission in conducting the hearings complied with the procedural requirements of the Interstate Commerce Act.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 34.

STATEMENT

This case had its origin in eight applications filed on February 23, 1937, by Seaboard under the provisions of sections 206 and 207 of the Interstate Commerce Act (R. 32). Each of these applications sought authority to institute trucking operations over regular routes and between designated termini. These applications were docketed as MC–88687 and Sub-Nos. 1 to 7, inclusive. Subsequently during the period up to February 21, 1941, Seaboard filed 21 additional applications for authority to institute additional trucking operations between specified points upon its lines of railroad. These were docketed as Sub-Nos. 8 to 28, inclusive (R. 32, 169). Six of these

applications were dismissed by the Commission before hearing, namely, Sub-Nos. 11, 12, 13, 14, 16, 17 (R. 169). All of the applications thus filed except for the six mentioned were granted but the present proceeding concerns the validity of the Commission's action in only 14 of these, namely, MC–88687, Sub-Nos. 1 to 10, inclusive, and 15, 18, and 19 (R. 5).

Following the filing of the applications involved in this suit the Commission assigned them for hearing before several joint boards designated in accordance with the operations proposed to be conducted as shown by each application.[2] At these hearings a number of motor carriers and the Southern Motor Carriers Rate Conference appeared as protestants. The latter filed motions challenging the composition of the several joint boards on the ground that the operations proposed should be considered as a single operation covering three states, or, considered in connection with Seaboard's rail operations, as involving six states. This objection was later made the subject of formal petitions to the Commission asking that all the applications be consolidated, heard as one, before a properly constituted joint board (R. 47). The motions and petitions were denied (R. 36, 37, 52). Hearings were had upon the separate applications and recommended reports and orders were issued. Exceptions to the proposed reports in the first 8 applications were filed and argument

[2] See section 205, Appendix, p. 37.

was had before Division 5. Later argument was also had in Sub-No. 18. On July 11, 1941, Division 5 issued its report embracing the title proceeding, Sub-Nos. 1 to 10, inclusive, 15 and 18, stating as its reason for consolidating the proceedings in a single report that "since applicants are the same in all the proceedings and the issues are similar, the case will be disposed of in one report" (R. 83).

In granting the several applications the Division predicated its action upon a finding that the proposed operations were of a specialized type; that is, a substitution of trucks for local way-freight trains in the handling of less-than-carload rail traffic, and restricted the authority accordingly.[3]

Thereafter Seaboard filed a petition for rehearing and reconsideration asking for the elimination condition 3 of the certificates which restricted the trucking operation to shipments moving under a through bill of lading and involving a prior or subsequent rail movement. Having received similar petitions in other proceedings involving like truck-for-rail operations, the Commission reopened the instant proceedings, and, in conjunction with four other pending proceedings heard oral argument on the issue of the removal

[3] The trucking operations are precisely like those described by this Court in *Thomson* v. *United States*, 321 U. S. 19, and in issue in No. 507, October Term, 1944, *Interstate Commerce Commission* v. *Parker*.

of this restriction. This was followed by the Commission's report and order of January 24, 1941, in which it disposed of Seaboard's petition (R. 109), *Kansas City Southern Transport Co. Common Carrier Application,* 28 M. C. C. 5. In this report the Commission reaffirmed its prior findings but substituted the key-point restriction for the prior or subsequent rail-haul condition.[4] At the same time the Commission recognized that the key points so fixed might change from time to time and therefore invited applicants to file appropriate petitions to amend the prescribed key-point locations (R. 118). Responding, the Seaboard filed a petition for rehearing as a result of which the Commission by order of July 25, 1941, reopened the proceedings for the limited purpose of determining whether the key points prescribed by the report and order of January 24, 1941, should be modified (R. 136).

Thereafter the Antitrust Division of the Department of Justice and the American Trucking Association asked leave and were permitted to intervene. Further hearing was held on November 12 and 13, 1941, limited to a consideration of appropriate key points. At this hearing both these intervenors attempted by appropriate motions to have the Seaboard's applications reheard *de novo.* These motions were denied. By formal petitions filed December 5, 1941, the same inter-

[4] See Brief for Interstate Commerce Commission in No. 507, October Term, 1944, pp. 27–29.

venors asked the Commission to reopen, consolidate, and rehear all the applications (R. 136, 137). These petitions were denied on January 21, 1942.

On July 6, 1942, the Commission issued its report on further hearing (34 M. C. C. 441, R. 151) in which it rejected the contentions of the intervenors and modified the key-point designations theretofore prescribed.

On October 26, 1943, the suit out of which this appeal grows was filed in the United States District Court for the Eastern District of Virginia. The complaint asked that the orders of July 11, 1939 (17 M. C. C. 413, R. 81), January 24, 1941 (28 M. C. C. 5, R. 109), July 6, 1942 (34 M. C. C. 441, R. 151), and the certificate of November 30, 1942 (R. 161), be annulled and set aside, and that the Commission be directed to reopen the proceedings (R. 22). The United States as statutory defendant confessed error and asked that the relief prayed for be granted (R. 172).

The cause was heard and submitted on June 1, 1944, upon the record of the proceedings before the Commission, the evidence adduced by Seaboard in support of its claim of laches, and the briefs and arguments of counsel. On July 17, 1944, the court below filed its opinion, Judge Paul dissenting, sustaining the validity of the Commission's orders in the premises (R. 205). On July 21, 1944, final judgment was entered dismissing the complaint (R. 22).

The present appeal was timely taken.

THE REPORTS AND FINDINGS OF THE COMMISSION

The reports of the Commission of July 11, 1939 (17 M. C. C. 413, R. 81), January 24, 1941 (28 M. C. C. 5, R. 109), and July 6, 1942 (34 M. C. C. 441, R. 151) contain the findings and conclusions by which the validity of the Commission's action must be tested.

In the first report the Commission dealt preliminarily with the contention that the applications should have been heard together before an appropriate joint board or an examiner—a contention that is pressed in this appeal. The Commission found that the joint board procedure prescribed by the statute was to be governed by the operations proposed to be conducted as shown by the application filed (R. 85, 86). As to the factual aspect of the several applications being in substance a single application the Commission said (R. 86):

> "However, we now have the entire situation presented by the several applications before us in all its aspects, following full and complete hearings, and we perceive no reason why we cannot properly consider and dispose of the applications on their merits upon the records made. Our attention has been directed to no instance wherein the adverse ruling of the joint board respecting evidence relating to operations over other than the route before the board has been prejudicial to protestants."

The report stated the purpose of the proposed operations as being "to substitute truck service for the existing less-than-carload freight service of the Railway between stations on its lines" (R. 87). It then discussed seriatim the particulars of the proposed operations under the several applications, the advantages claimed for each substituted service, and noted the existing motor carriers which were operating along the several routes in question (R. 88–101). The report then proceeded to a general discussion and findings. The Commission found:

1. In most instances there is adequate motor carrier service over the considered routes (R. 104).

2. The proposed service will expedite deliveries of less-than-carload shipments which now move by rail (R. 104).

3. The proposed service should result in improved service with respect to merchandise, as well as carload traffic (R. 104).

4. Applicants will be able to effect some economies through the elimination of train stops and reduction of the number of cars in their trains (R. 104).

5. The proposed rail-truck coordinated service is in the public interest (R. 105).

6. There will not be any great diversion of traffic from existing independent motor carriers (R. 105).

7. The only need shown is for service which is strictly supplemental of, or auxiliary to, and coordinated with applicants' rail service (R. 105).

The Commission then proceeded to make its ultimate finding in the language of the statute as follows:

> "We find that the present and future public convenience and necessity require operation by applicants as a common carrier by motor vehicle in interstate or foreign commerce, of general commodities between the points and over the regular routes described in the appendix hereto, serving the intermediate and off-route points referred to, and subject to the following conditions (R. 105):
>
> "(1) The service by motor vehicle to be performed by applicants shall be limited to service which is auxiliary to or supplemental of the service of the Seaboard Air Line Railway;
>
> "(2) Applicant shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway;
>
> "(3) Shipments transported by applicants by motor vehicle shall be limited to those which move under a through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail.
>
> "(4) Such further specific conditions as we in the future may find it necessary to impose in order to restrict applicants' operations by motor vehicle to service which is

auxiliary to or supplemental to the rail service of the Seaboard Air Line Railway.

"We further find that applicants are fit, willing, and able properly to perform the service proposed by the considered applications and to conform to the provisions of the act and our rules and regulations thereunder; and that a certificate authorizing such operations should be granted."

In its report of January 24, 1941 (28 M. C. C. 5, R. 109), Chairman Eastman, speaking for the Commission, reconsidered the imposition of condition 3 in the instant applications and in other applications involving the inauguration of the substituted truck-for-rail service. Speaking of the characteristics of this specialized type of motor carrier operations the report made these general findings:

(1) Coordinated service through the voluntary cooperation of all or some of the existing motor carriers would not be practicable and the useful public purpose which the coordinated operations would serve could not be achieved effectively through the use of existing facilities (R. 114).

(2) The development of the coordinated service would not seriously endanger the operations of existing motor carriers (R. 114).

(3) The traffic under consideration, which is chiefly so-called, package or merchandise freight in less-than-carload quan-

tities, is, of course, traffic which the railroads are and have been under an obligation to transport and which they will continue to transport whether we grant or deny the applications (R. 114).

(4) The way-freight train service which is used in serving the smaller stations is uneconomical and inefficient, and trucks can be used in substitution therefor to much advantage both to the railroads and to the public served (R. 115).

(5) Reduction in cost and increased efficiency of transportation service inure to the benefit of the general public and are required by public convenience and necessity (R. 115).

The report then considered the rail-haul condition theretofore imposed upon grants of authority to conduct the substituted service. It found that the railroad, as well as independent motor carriers, has been and is furnishing service between the stations, but that between many of them the present means of railroad service, the way-freight train, is uneconomical and inefficient, and as to that traffic public convenience and necessity require the increased economy and efficiency which will result from such substituted use of trucks (R. 116). It, therefore, adopted the key-point plan of condition in lieu of the rail-haul condition.

Recognizing that unnecessary and wasteful duplications of service should be avoided in the public interest the report examined carefully the

proposal that existing carriers could be utilized with equal effect without adding new operations to the sum total of existing facilities. It reached the conclusion that none of the three alternative plans was feasible, namely, (1) expansion of existing Railway Express service to handle this traffic; (2) use of existing motor carriers by the establishment of proportional rates covering the motor carrier portion of the transportation; (3) the establishment of through routes and joint rates with existing motor carriers (R. 123, 124). The first plan was dismissed because it was not shown that the Express Agency would be willing to furnish such service or could do so without loss, or that the existing service of this kind which it furnishes by passenger trains at freight rates is profitable either to it or to the railroads (R. 123). The second plan was held to be unlawful under the decision of this Court in *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344 (R. 124). As to the joint rate plan the Commission after pointing out that the railroad has been engaged for many years in handling the less-than-carload traffic in question wholly with its own facilities, that the railroad would divide control and responsibility with one or more motor carriers and the latter would deal directly with shippers at one end of the joint haul, that the motor carrier or carriers upon which it would depend in part for the performance of an efficient joint service would also be engaged, solely or

jointly with motor carrier connections, in a competitive all-motor service, and that the joint service would entail additional billing, checking, and transfer service (R. 126), made the following finding (R. 129):

> "Having in mind that, for the reasons above indicated, only the joint-rate plan is available, that under that plan applicant would find it necessary to divide control over and responsibility for less-than-carload service in the affected area with motor-carriers which would continue to afford a competing all-motor service, and that the unit costs of the motor service would be materially higher than under applicant's plan with no assurance of offsetting savings in truck-miles, we find that the useful public purpose which would be served by coordination of rail and truck service could not be served as well by existing motor carriers as under applicant's proposed plan."

Finally the report held that the proposed new operation will not endanger or impair the operations of existing carriers contrary to the public interest (R. 129).

The last report of the Commission dated July 6, 1942 (34 M. C. C. 441, R. 151), which is involved in this case dealt principally with the application of the key-point condition in the certificates theretofore granted to Seaboard. It resulted from petition for modification of the key points prescribed in the report and order of

January 24, 1941 (R. 109) and hearing thereon which by Commission order of July 25, 1941 (R. 135), was restricted to the determination "whether Condition 3 as set forth in the prior report, 28 M. C. C. 5, should be modified, and, if so, the extent of such modification" (R. 136).

In this report the Commission stated (R. 156):

> "The original rail-haul condition which restricted the authorized operations to coordinated movements partly by railroad and partly by motor vehicle was too broad in that it permitted the applicants to handle by motor vehicle over long distances and between large and important points shipments which should properly move a greater portion of the distance, or wholly, in the superior through train service. On the other hand, it was too restrictive, because in many instances it required applicants to continue between small points the slow and costly way-freight train service which the substituted service was intended to avoid. It was to remedy these defects that we substituted a key-point condition. We pointed out, however, that in view of the limited record difficulties had been encountered in determining the key points in all instances, and that any need for modification of the designated key points should be called to our attention by appropriate petition."

The report then discussed the evidence with respect to the appropriate key points and modi-

fied Condition 3 by designating key points as follows (R. 159):

> "No shipment shall be transported by applicants as a common carrier by motor vehicle from Richmond to Petersburg, Va., not including shipments moving from Richmond through Petersburg to points between Petersburg and Henderson, N. C., from Monroe to Charlotte, N. C., or from Charlotte to Monroe not including shipments moving from or to Rutherfordton, N. C., or points between Charlotte and Rutherfordton, nor between the following points or to or through or from more than one of said points: Richmond, Va., Henderson, Raleigh, Hamlet, Monroe, and Wilmington, N. C.; Hartsville, Columbia, Garnett, and Greenwood, S. C.; and Jacksonville, Tallahassee, and Tampa, Fla."

ARGUMENT

I

In recognizing the use of motor vehicles in substitution for way-freight rail service on less-than-carload freight as a special type of service, and in so treating and restricting the motor carrier operations of Seaboard in the instant case, the Commission acted within its statutory powers

The whole structure of appellants' argument is built upon the initial premise that the Commission is without statutory power to recognize and authorize these specialized operations of motor vehicles in conjunction with the less-than-carload

rail service, which they designate as "hybrid." Thus on p. 69 of appellants' Brief the statement is made that there is no authority in law for the finding that the motor carrier operations authorized are a "new type of service."

Upon this postulate hangs the entire argument of appellants: whether the Commission has adopted a practice which runs counter to the Congressional policy as expressed in the Interstate Commerce Act; whether in passing upon the instant applications the Commission employed improper criteria in finding public convenience and necessity; whether the Commission can lawfully exempt these operations from the tariff and accounting provisions of the Act; whether the Commission improperly excluded evidence; and whether the Commission failed to make the subordinate findings necessary to support its ultimate finding that public convenience and necessity required the institution of the proposed service.

That the Commission in recognizing and treating motor carrier operations as of a special type when they constitute one component of a single rail-truck transportation service, was acting well within its statutory power, is demonstrated through a consideration of the background of the Motor Carrier Act, its legislative history, its legislative policy, and the language of the enactment itself.

In the Commission's Brief filed in No. 507, *Interstate Commerce Commission* v. *Parker*, the

background and legislative history of the Motor Carrier Act is set out with some particularity. Without burdening this brief with a repetition of the matters there set forth, we deem it sufficient for present purpose to summarize what was there said.

The use of motor vehicles by railroads in the handling of merchandise shipments in way-freight service had come into being prior to 1932. The attention of Congress was specifically called to this use by the reports of the Commission in *Motor Bus and Motor Truck Operation,* 140 I. C. C. 685, and *Coordination of Motor Transportation,* 182 I. C. C. 263, 336. These two reports approved and emphasized the desirability of continuing this substitute truck-for-rail service. Commissioner Eastman in testifying before the House and Senate Committees in 1935, called attention to the growing use by railroads of motor vehicles not only in their terminal operations but also as a substitute for way-freight service, and expressed the view there would be found many more ways where they could be used to advantage in combination with railroad service, and hoped to see the time when railroads would use these opportunities fully. Hearings on H. R. 5262 and 6016, 74th Cong. 1st Sess., 1935, p. 46; Hearings on S. 1629, 74th Cong. 1st Sess., 1935, p. 85.

It cannot be said that the so-called "special type of motor carrier service," was an innovation subsequent to the Motor Carrier Act, created by the

Commission in arbitrary favoritism towards the railroads, as appellants' argument asserts. On the contrary it was not only an already existing special method of using motor vehicles, but a method which was known to Congress and recommended to it as a type of motor carrier operation that should be encouraged.

In this setting Congress enacted the policy of Motor Carrier Act of 1935, "to improve the relations between and coordinate transportation by and regulation of, motor carriers and other carriers." By section 213 (a) it specifically empowered "a carrier by railroad, express, or water to consolidate, or merge with, or acquire control of, any motor carrier or to purchase, lease, or contract to operate its properties, or any part thereof" upon the Commission's finding "that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." Of significance also is the fact that section 207, dealing with the issuance of certificates of convenience and necessity, made no distinction between a railroad applicant and any other applicant and the final enactment made no change in the text of the recommended bill of Coordinator Eastman who stated that "the bill permits a railroad to own these other forms of transportation or acquire them with the approval of the Commission except competitive wa-

ter lines." Hearings on S. 1629, 74th Cong. 1st Sess. Part I, p. 85.

Finally the 1935 Act by section 204 (c) authorized the Commission to establish "such just and reasonable classifications of * * * groups of carriers included in the term 'common carrier by motor vehicle,' * * * as the special nature of the services performed by such carriers * * * shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this part, to be observed by the carriers * * * so classified or grouped, as the Commission deems necessary or desirable in the public interest." Here the Commission has recognized and in substance classified a motor carrier operation which is auxiliary to or supplemental of railroad service. It has safeguarded other motor carrier transportation operating in the same field by appropriate limitations to the special service described.

By the time the Transportation Act of 1940 was enacted the Commission had established its practice in dealing with the inauguration of this auxiliary and supplemental trucking service. It had announced the general proposition that the use of trucks as an adjunct to rail service was to be encouraged. By a series of reports it had declared the grounds upon which it deemed public convenience and necessity would require its approval, namely, the resulting economies, faster

and more frequent local service, improvement in the through rail service on carload shipments and the release of cars for such through movements. It had found that these motor carrier operations are of a special type, that they do not introduce new competitive factors within the field of operations, that the operations of the independent motor carriers will not be adversely affected, and finally that they can best be conducted under a management synchronized with the railroad's operation.[8]

If the Commission had been acting without statutory authority, or had been applying a practice in violation of the policy of Congress, it would seem that Congress would have been at pains to set the Commission right in the 1940 legislation. But the Transportation Act of 1940, while enacting a new transportation policy, still laid emphasis on the importance of coordinating and preserving all modes of transportation, and the promotion of "safe, adequate, economical and efficient service, * * * all to the end of developing, coordinating and preserving a national system of transportation * * *." The provisions of sections 204 (c) and 207 were left unchanged. Section 213 was eliminated but its provisions were incorporated in a new section 5, applicable to rail, motor and water carriers. In

[8] See Commission reports cited in Brief for Interstate Commerce Commission in No. 507, *Interstate Commerce Commission* v. *Parker*, pp. 19–33, and Appendix "B."

the extensive legislative history leading up to the 1940 Act there is no suggestion of criticism to the effect that the Commission was acting in arbitrary disregard of the will of Congress. Conversely the inference is inescapable that the Commission in dealing with this type of motor carrier operations was acting within its statutory powers and in accordance with Congressional policy. *United States* v. *Pennsylvania R. Co.*, 242 U. S. 208, 229; *United States* v. *Louisville & Nashville R. Co.*, 236 U. S. 318; *Patterson* v. *Louisville & Nashville R. Co.*, 269 U. S. 1, *Hartley* v. *Commissioner*, 295 U. S. 216.

II

In passing upon the issue of public convenience and necessity in Seaboard's applications the Commission did not apply improper criteria nor fail to apply necessary criteria

As has been detailed in the Commission's brief filed in No. 507, its treatment of applications for authority to inaugurate the restricted type of motor carrier operations which are here involved has followed a consistent pattern. This has been premised upon its finding that the service in question is of a type distinguishable from the ordinary over-the-road motor carrier service in that it is essentially a mere mechanical improvement in rail service. *Kansas City S. Transp. Co., Inc., Common Carrier Appl.*, 10 M. C. C. 221, 235.* The

* See also cases cited in footnote, p. 20, Commission's Brief in No. 507, *Interstate Commerce Commission* v. *Parker*.

railroad in employing motor trucks in lieu of local way-freight trains in handling less-than-carload traffic is merely transporting traffic which it has always transported and is and continues to be under an obligation to transport. That being so it inexorably follows that there is no creation of a new competitive factor within a field already served by both rail and motor carriers operating in their ordinary manner. *Kansas City S. Transp. Co., Inc., Common Carrier Appl., supra; Missouri Pacific R. Co., Extension,* 41 M. C. C. 241, 244; *Penna. Truck Lines, Inc., Control-Barker,* 5 M. C. C. 9, 11. Specifically in the instant case the Commission said (34 M. C. C. 441, 443, R. 155):

> "* * * Applicants, as a motor carrier, do not solicit traffic from the general public but merely utilize motor vehicles in fulfilling their undertaking to transport as a railway. The motor-vehicle service is auxiliary to or supplemental of applicants' rail service and is so limited by condition 1. The modifications requested [in prescribed key points] will in no way change the character of the service applicants are authorized to perform as a motor carrier; nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor carrier field."

Having established this service as specialized and restricted motor carrier operations "offered by the railroad as component parts, not as sepa-

rate or distinct segments, of its single service,"[1] the Commission carefully took measures to insure that the operations so authorized would continue as such. Not only did it prescribe present conditions designed to prevent an expansion of these specialized operations beyond their peculiar limits, but retained the continuing right to enforce and apply further conditions in the future should they be necessary. That the latter was not a perfunctory gesture is evidenced by the Commission's action in *Campbell Sixty-six Express, Inc.,* v. *Frisco Transp. Co.,* 43 M. C. C. 641.

The underlying factors which the Commission has held sufficient to meet the statutory standard of public convenience and necessity, having in mind the inherent character of the operations proposed, have been more or less similar in each case. They have been, generally speaking, the economies which will result in the use of trucks in substitution for local way-freight trains, faster and more frequent service to the local shippers, improvement in the through rail service on carload shipments and the release of cars for such through movements.

Thus in the instant case the Commission found that the proposed service will expedite deliveries of less-than-carload shipments which now move by rail; that it will result in improved service with respect to merchandise, as well as carload traffic; that applicant will be able to effect some

[1] *Thomson* v. *United States,* 321 U. S. 19, 24.

economies through the elimination of train stops and reduction in number of cars in their trains (R. 104, 105).

These findings, we submit, supported as they are by substantial evidence, are sufficient to satisfy the statutory criterion of public convenience and necessity.*

In dealing with this type of motor carrier operations the Commission was confronted with the problem of reconciling certain desiderata. Abstractly considered, the substitution of trucking operations in the handling of local less-than-carload rail traffic was of great public advantage. On the other hand was the economic desirability of avoiding a duplication of transportation facilities. Generally speaking in all cases coming before it there was already adequate motor carrier service in the territory affected. The institution of the substituted truck for rail service through the use of the facilities of existing motor carriers was dependent upon voluntary cooperation between the railroad and the independent truckers. The Commission was without power to compel such a joint undertaking. Therefore the Commission's problem became one of balancing the public advantages to be gained by permitting the railroad to engage in the limited trucking operations against the disadvantages of depriving the public of the improved service. The relative ability of providing the better service as between

* See Commission's Brief, pp. 34–40, in No. 507.

the railroad on the one hand and the independent truckers on the other, only became a pertinent issue when there was willingness on the part of both independent truckers and the railroad to enter into the joint undertaking, or at least no expressed unwillingness on the part of the railroad. But even on such an issue the Commission had given consideration to these alternatives and had arrived at a considered conclusion that it was in the public interest that there be no divided responsibility but there should be a complete service under a synchronized management in coordination with the railroad's operation. *Kansas City S. Transp. Co., Common Carrier Appl.*, 10 M. C. C. 221, 28 M. C. C. 5; *Willett Co. of Ind., Extension*, 21 M. C. C. 405, 409; *Pennsylvania Truck Lines, Extension*, 42 M. C. C. 759, 773. It should be pointed out that this conclusion was not reached in derogation of any right of existing motor carriers to participate in the transportation, or because of an injury which might be inflicted upon them through permitting the railroads to inaugurate the service, since in all these cases the Commission found that the proposed motor carrier operations did not duplicate the service then being rendered by the independent truckers and that it would to no substantial degree divert traffic from them.

The fallacy of appellants' argument lies in the assumption that the service which the Com-

mission has authorized is a like service which the independent motor carriers are now conducting.

Therefore, they say that the underlying considerations which would support a like service must be followed here. But as has been pointed out in this brief, and by the Commission time and time again in its reports, it was dealing with a new and different type of motor carrier operations, and consequently the elements which would meet the statutory standard might of necessity differ.

III

The failure of the Commission to require Seaboard to comply with sections 217 and 220 of the Interstate Commerce Act does not invalidate the orders in issue

Section 217 [9] deals with filing and publication of motor carrier tariffs. Section 220 [10] deals with the maintenance of motor carriers' accounts. Appellant contend that the Commission's failure to require Seaboard to conform to the standards prescribed by the Commission for other motor carriers under the provisions of those sections, unfairly discriminates against the latter and thus voids the orders in issue.

The Commission is given broad powers under these provisions of the statute. The tariffs of motor carriers "shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regula-

[9] See Appendix, p. 39.
[10] See Appendix, p. 40.

tion shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations." As to motor carriers' accounts the Commission "may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by motor carriers, * * * including the accounts, records, and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys; and it shall be unlawful for such carrier, * * * to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto."

In dealing with the special type of motor carrier operations here involved the Commission in *Ex Parte 129*, 232 I. C. C. 683, prescribed the method of tariff publication to be followed by railroads engaged in the truck-rail less-than-carload transportation service. The Seaboard has complied with method so prescribed (R. 190). So too with the method employed by the Seaboard in keeping its accounts of its auxiliary motor carrier operations. By special order Seaboard was relieved by the Commission of the necessity of segregating the revenues and expenses of their motor carrier operations (R. 191). The mere fact that the Commission has permitted different tariff and accounting practices for different types of motor

carrier operations does not *per se* condemn such action. On the contrary the latitude which the statute accords the Commission in dealing with these matters suggests the need for diversified treatment dependent upon the type of carrier involved.

Particularly pertinent are the remarks of Senator Wheeler in discussing section 204 (c) which empowers the Commission to classify carriers:

> "This paragraph is of great importance. It enables the Commission to classify carriers performing special and distinct types of service, such as hauling of milk, livestock, furniture, petroleum products, newspapers, and so forth, and to vary the regulatory requirements as to rates, records, reports, and other matters in accordance with the nature of the service and the public need. These provisions will promote flexible administration and enable the Commission to avoid imposing unnecessary burdens. It is to the interest of carriers, shippers, and the public that this paragraph be retained.
>
> "I think that it is an exceedingly important paragraph, because of the fact that the Commission may find, for instance, that persons who are engaged simply in hauling furniture need one kind of regulations or rules that may be prescribed. Another classification may be those that are engaged in

hauling oil and gasoline and a certain type of regulations may be necessary for them. This paragraph gives to the Commission the power to handle those matters" (79 Cong. Rec. 5652).

But in any event, the questions of whether the Commission has acted lawfully in *Ex Parte 129* or in relieving the Seaboard from the necessity of segregating its accounts, cannot be raised collaterally in this proceeding. Section 207 provides that a certificate *shall* issue upon a finding that the applicant is fit, willing, and able, and that the service is required by the public convenience and necessity. Questions dealing with sections 217 and 220 are not pertinent here.

IV

Appellants were accorded a full and fair hearing

(a) The Commission's action in excluding certain evidence or its refusal to require Seaboard to produce certain evidence was not error

Appellants charge that not only did the Commission refuse to require Seaboard to produce but it refused to permit independent motor carriers to develop evidence bearing on public convenience and necessity and destructive competitive practices. Thus, they claim, they were denied a full and fair hearing.

Once again we call attention to the erroneous theory which the appellants persistently have pursued before the Commission, in the court below, and in this Court. The contention here made

is predicated upon the assumptions that the several applications here involved constitute in fact and substance a single operation identical with the service performed by existing independent motor carriers. But the Commission acting within its administrative province has held against the appellants on these assumptions. It has decided that the operations proposed were local, confined to the handling of less-than-carload freight between local stations on the Seaboard; that such operations were not those of the independent motor carriers and were not competitive to such independent motor carrier operations. It restricted the operating authority conferred so as to prevent Seaboard's operation of its trucks in competition with the independent motor carriers. Thus were questions of unnecessary, unfair and destructive competition removed from the case.

Appellants in the court below enumerated thirteen subjects which it claimed the Commission refused to consider, or were excluded. In examining these subjects it is clear that where they were relevant in the light of the proper issues evidence was received or its nonproduction explained.

But appellants have also failed to show wherein they have been injured through the Commission's ruling upon the evidence. Mere general charges are insufficient. *Chicago, St. P., M. & O. R. Co.* v. *United States*, 322 U. S. 1.

(b) The composition of the joint boards which heard the several applications did not contravene section 205 (a)

Appellants contend that in referring the several applications to different joint boards consisting of a representative of the states through which each application showed that the operations were to be conducted, the Commission did not comply with the requirement of section 205.[11] Under appellant's theory the Commission should have consolidated these applications and made its reference as though there were but a single application for a through motor carrier service over all the routes covered by the individual applications. It was upon this theory that the Southern Motor Carriers Rate Conference rested its motion to consolidate which was denied by the Commission February 16, 1938. (R. 52).

We submit that neither the language of the section nor its practical application supports a construction which would require the Commission to go beyond the face of the application in determining the proper composition of the local board. This Court has recently had occasion to consider similar contentions. *North Coast Transportation Co.* v. *United States,* 54 F. Supp. 448, affirmed per curiam, — U. S. —, 65 Sup. Ct. Rep. 62; *Crichton* v. *United States,* 56 F. Supp. 876, affirmed per curiam, — U. S. —, 65 Sup. Ct. Rep. 114. These cases are decisive of the issue raised here.

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[11] See Appendix, p. 37.

CONCLUSION

For the reasons set forth above we submit that the judgment and decree of the court below should be affirmed.

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APPENDIX

The declaration of policy of the Motor Carrier Act of 1935, 49 Stat. 543, states:

> "SEC. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part."

The National Transportation Policy, as set forth in the Transportation Act of 1940, is as follows (54 Stat. 899):

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to

the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carry out the above declaration of policy."

"SEC. 5. (2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

"(1) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership

of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

* * * * *

"(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in the case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided,* That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an ap-

plicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

"SEC. 205. (a) The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates: * * *. The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are proposed to be conducted: *Provided,* That the Commission may designate an examiner or examiners to advise with and assist the joint board under such rules and regulations as it may prescribe. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers, and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appro-

priate order thereon: *Provided, however,* That a joint board may, in its discretion, report to the Commission its conclusions upon the evidence received, if any, without a recommended order. Orders recommended by joint boards shall be filed with the Commission, and shall become orders of the Commission and become effective in the same manner and shall be subject to the same procedure, as provided in the case of orders recommended by members or examiners under section 17. If a joint board to which any matter has been referred shall report its conclusions upon the evidence without a recommended order, such matter shall thereupon be decided by the Commission, giving such weight to such conclusions as in its judgment the evidence may justify."

"SEC. 206. (a) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: * * *"

"SEC. 207. (a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed

service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however*, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations."

"SEC. 217. (a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful."

"(d) No common carrier by motor vehicle, unless otherwise provided by this part, shall engage in the transportation of passengers or property unless the rates,

fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part."

"SEC. 220. (a) The Commission is hereby authorized to require annual, periodical, or special reports from all motor carriers, brokers, and lessors (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers, brokers, and lessors specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary. Such annual reports shall give an account of the affairs of the carrier, broker, or lessor in such form and detail as may be prescribed by the Commission. * * *"

"(d) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by motor carriers, brokers, and lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys; and it shall be unlawful for such carriers, brokers, and lessors to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto. The Commission may issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of motor carriers, brokers, or lessors as may after a reasonable time be destroyed, and prescribing the length of time the same shall be preserved. * * *"

U. S. GOVERNMENT PRINTING OFFICE: 1945

SUPREME COURT OF THE UNITED STATES.

No. 558.—October Term, 1944.

American Trucking Associations, Inc., Flamingo Truck Lines, Inc., et al., Appellants, *vs.* The United States of America, Interstate Commerce Commission, Legh R. Powell and Henry W. Anderson, Receivers of The Seaboard Air Line Railway Company.	Appeal from the District Court of the United States for the Eastern District of Virginia.

[June 18, 1945.]

Mr. Justice Reed delivered the opinion of the Court.

This appeal involves the applicability by the Interstate Commerce Commission of the legal criteria for the issuance of certificates of convenience and necessity for motor truck operation by a railroad which were discussed in the opinion in *Interstate Commerce Commission et al.* v. *Parker et al.*, 507-8, October Term 1944, decided today.

In these applications Legh R. Powell and Henry W. Anderson, Receivers of the Seaboard Air Line Railway Company, sought certificates of convenience and necessity under Sections 206(a) and 207(a), Motor Carrier Act, 1935, 49 Stat. 551, as amended by the Transportation Act of 1940, Interstate Commerce Act, part II, 54 Stat. 923, for the operation of motor trucks as auxiliary to and supplemental of the railroad operation of Seaboard. These motor routes were sought to improve the delivery of less-than-carload freight to way stations of the railroad. Fourteen applications are involved.[1] The routes in issue paralleled the main line of the Seaboard for the greater portion of the distance between Richmond, Virginia, and Jacksonville, Florida. Other controverted routes served shorter railway lines in North Caro-

[1] The detailed scope of thirteen of the applications is set out in the appendices to the reports of the Commission, 17 M. C. C. at 433; 28 M. C. C. at 25, and that of Sub—No. 19—Tampa-Sebring, Florida, route, in 21 M. C. C. at 776.

lina, South Carolina and Florida. Still other similar motor routes are operated by the Seaboard under orders of the Commission which are not now in controversy. Well above a hundred way stations will be served by the proposed applications. Objections to the applications were made by existing motor carriers along the routes and by various trucking organizations.

The Commission set the applications for hearing before joint boards pursuant to its interpretation of Section 205(b), Motor Carrier Act of 1935, as amended, Section 20(c), Transportation Act of 1940. Diverse recommended reports and orders were issued by the joint boards. A number of the applications were consolidated for argument before the Commission; others were dealt with on the exceptions to the joint board reports or by individual hearing. As the Seaboard was the only applicant and the issues were similar, the applications were disposed of as a single proceeding. *Seaboard A. L. Ry. Co. M. Operation—Gaston-Garnett, S. C.*, 17 M. C. C. 413; 21 M. C. C. 773; 28 M. C. C. 5; 34 M. C. C. 441.

The Commission granted the applications upon a finding that the proposed motor operations were a specialized type coordinated with rail operations. See *Thomson* v. *United States*, 321 U. S. 19. The specially constituted District Court affirmed the order of the Commission against attack because the certificates were granted without regard to their effect on existing motor carriers—a ground considered today in *Interstate Commerce Commission* v. *Parker*, *supra*, and over the additional objections that the joint boards were improperly constituted, that material evidence on the effect of the proposed operations on the existing or over-the-road motor truck service was excluded by the joint boards and the Commission and that the Seaboard was exempted from the tariff provisions of Section 217 and the accounts and record provision of Section 220 and the regulations thereunder. The appellees asserted that laches barred the court proceedings to enjoin the order of the Commission. The same issues are here. Nothing more need be said as to the contentions which were discussed in the *Parker* case. The district court proceedings and this appeal are authorized by 28 U. S. C. § 41(28) and §§ 43-48 and § 345.[2]

[2] The United States answered in the District Court and confessed error on all points. The Interstate Commerce Commission and the Seaboard supported the challenged order. The Government is represented here only by the Commission.

Joint Boards. From the earliest hearing, objection was made to the composition of the joint boards. Section 205(a), so far as pertinent here, provides:

> "The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, . . . refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations: Applications for certificates, permits, or licenses; . . . The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are proposed to be conducted . . . ."

The applications were for short routes of varying lengths up to nearly two hundred miles. Many were contiguous. Some crossed state lines. Others were wholly within a state. The Commission referred each application to a joint board composed of one member from the state or states in which the route involved in the particular application was situated.

As the series of applications cover continuous motor routes for a large portion of the railroad, appellants contend that the Commission should have consolidated these applications, constituted a board and made its reference as though there were only a single application for motor carrier service which was to be fully integrated with the Seaboard system in the six states which the railroad traverses or at least Virginia, North Carolina, South Carolina and Florida, in which states are located all the routes for which applications are made. If this position is correct the joint boards should have had four or six members instead of the one or two members who actually composed them. We are of the opinion that the statute does not support appellant.

It will be noted that Section 205(a) requires that applications for certificates be referred to joint boards composed solely of members from the state within which the operations are proposed to be conducted. In these applications the proposal is to conduct operations in a single state or in some instances in two states. The only source of knowledge for the Commission as to proposed operations were the applications. It seems necessary for it, therefore, to rely on the representations in the applications in determining the scope and in designating the joint boards to hear them.

The Commission has so interpreted the act. See *Argo and Collier Truck Lines Common Carrier Application*, 27 M. C. C. 563, 566; *Atlantic Coast Line Railroad Company Extension of Operation*, 30 M. C. C. 490, 491-2. These applications did not disclose or propose any interchange or unification of the traffic among the respective routes. Any one of them, or all except one, might have been refused by the Commission. Consequently, the Commission properly referred each application to a board having a member solely from the state or states in which the application proposes to conduct operations.

But the appellant contends that the grant of appellee's applications allows a unified service in three states and that appellee may have intended this result when it filed the several applications. Assuming this to be true, it does not make the Commission's action in the designation of separate boards unlawful. It is impossible for the Commission to predict accurately such a result or determine the existence of such an intent at the time an application is filed—at which time the Commission must designate a board for hearings. In most instances the intent or purpose of the applicant would become apparent only when hearings were held on the applications. Thus the appellant's position would require reassignment of cases to differently constituted joint boards as the scope of the application was narrowed or expanded by the testimony and arguments of the parties or conclusion of the joint boards or the Commission in the course of the hearing. See *Seaboard Air Line Railway Company Motor Operations—Gaston-Garnett, S. C.*, 17 M. C. C. 413, 416-17. It may be that in the light of our ruling on the admissibility of certain evidence the Commission may wish to consolidate hearings on the applications, but that is a matter for administrative discretion.

Excluded Evidence. Appellants throughout the proceedings have sought to introduce evidence both before the joint boards and the Commission as to the economic effect on the existing motor carriers of the proposed railway operation of motor trucks and have persisted in their objections at each stage of the proceedings. The joint boards refused to permit evidence as to conditions on any route except that covered by the application under consideration. Protestants made repeated efforts before the Commission to secure consolidation of the joint board hearings but

were unsuccessful. After the grant of the certificates with the limitation of operations to a prior or subsequent movement by rail on July 11, 1939, 17 M. C. C. 413, and February 17, 1940, 21 M. C. C. 773, the proceedings were reopened to consider the modification of the rail movement requirement in prior orders.[3] Substitution of the key point requirement or its equivalent for rail movement was made on January 24, 1941, *Kansas City S. Transport Co., Inc., Com. Car Application*, 28 M. C. C. 5. On October 3, 1941, all applications were reopened solely for reexamination of Condition 3, the key point condition, as to whether it "should be modified and, if so, the extent of such modification." This hearing was on all applications and before an examiner of the Commission alone. At that hearing the protestants pressed for the introduction and admission of further evidence as set up in their petition to which reference is about to be made. 34 M. C. C. 441, 442. This petition sought permission to introduce evidence as to the economic effect on the independent trucking industry and a direction to the Seaboard to furnish statistics as to the traffic it proposed to handle by truck.[4] The petition was denied without a statement as to the Commission's reasons for the denial. 34 M. C. C. 441, 442. This we think was erroneous.

The bill of complaint sets up in sections VIII and XI numerous types or items of evidence which it alleges were excluded by the joint boards or the Examiner. Some of these items, such as "The refusal of the railroad to enter into arrangements with the independent motor carriers" or "Use of railroad facilities and em-

[3] Sub No. 19 was modified in 34 M. C. C. 441.

[4] Two paragraphs of the petition read as follows:

"(b) To direct the taking of evidence for the purpose of developing and determining whether the proposed and existing operations by applicant, considered together, and in connection with its transportation policy and the transportation policy of railroads, express companies, water carriers, and railroad associations with which it is associated, will unduly restrain competition; impair sound economic conditions in the independent trucking industry; result in unfair and destructive competitive practices; discriminate against shippers; or otherwise be inconsistent with the provisions of, or the transportation policy declared in, the Interstate Commerce Act, and with the Antitrust Laws."

"(f) To direct the Seaboard Air Line Railway to furnish such statistical information for the record as may be necessary to enable the Commission to determine the extent, quantity, kind and character of traffic which Seaboard Air Line Railway handles subject to restrictions against participation by independent motor carriers, and the quantity, kind and character of traffic which Seaboard Air Line proposes to handle by truck and upon which it relies for support of its application for a certificate of convenience and necessity."

ployees," hardly require proof. They are admitted by all parties. Other items have had considerable proof introduced and more may be deemed by the Commission cumulative or unnecessary. "Cost of operations" would be an example. There is considerable overlapping of some categories of proposed evidence. For instance one item is "The economic effect on existing motor carriers" and "Destructive competition flowing from subsidized truck operations." Therefore we do not determine that all the items of evidence as set out by appellants, either in their bill of complaint or the petition before the Commission, were improperly excluded.

We think that it is sufficient to say that the joint boards and the Commission should have admitted evidence of the flow of traffic by truck from points covered in one application to points covered by other applications and evidence of the effect of the motor traffic, developed or prospective on all Seaboard routes for which applications are pending or already granted, on the over-the-road motor carriers. Furthermore other competent and material evidence which the protestants may produce as to the economic effect on the non-rail motor carriers should be received. The applicant will of course be required to furnish needed statistical evidence which is reasonably available to it and will have opportunity to submit evidence upon its own part. This specification of admissible evidence shall not be deemed to restrict the discretion of the Commission or the joint boards in receiving other evidence deemed by them or either of them material to aid in the solution of the issues between the parties.

While as pointed out by the brief of the Seaboard none of this evidence goes "to the inherent nature of auxiliary motor service performed by rail carriers," it may be decisive in the Commission's determination of whether to grant the applications. We have just said in the *Parker* case that the Commission must weigh the advantages of improved rail traffic against the injury to the over-the-road motor carriers to determine where public convenience and necessity lies. It is a difficult task to appraise these conflicting interests. It is a problem which should be solved only after the receipt by the Commission under its usual rules of admissibility, of all available material evidence as to the probable effect of the proposals on the operations both of the proponents of and the protestants against the applications. *Int. Com. Comm.* v.

Louis. & Nash. R. R., 227 U. S. 88, 91; *Chicago Junction Case*, 264 U. S. 258, 264-65. It is not enough that the railroad's motor operations are found by the Commission to be of a different character from over-the-road motor operations because they are integrated with railroad operation. The Commission must also consider the disadvantage to the public of a serious impairment of the non-rail motor carriers. Those affected are entitled to fully develop the bearing of the proposals on the transportation agencies which are involved. The discretion of the Commission should be exercised after consideration of all relevant information.

Appellants have other objections to the order of the Commission which have been considered and a few words need to be said about only two of them. It is objected that the railroad as a motor carrier has been permitted through other proceedings to file illegal tariffs, violative of Section 217 of part II of the Interstate Commerce Act, and has been improperly exempted by the Commission from certain accounting requirements of Section 220 of the same part to which the other motor carriers are subject.[5] These are obviously not grounds upon which appellants can base an argument against the grant of a certificate of convenience and necessity.

Appellees on their part suggest that the Commission's grant of the requested certificates should be sustained because of laches. The final certificate was issued on November 30, 1942, and this suit was brought October 21, 1943, eleven months later. The appellees' evidence as to change of position in reliance upon the certificate is not impressive. There was no specific proof of the purchase of equipment in reliance on the certificate or of failure to purchase other equipment, such as railroad cars, in reliance on the use of trucks. There was some testimony of minor adjustments in methods of operation. A number of the routes had not been put in operation and others were abandoned. The question of laches was not passed on by the district court.

In view of this evidence, we do not feel the defense of laches should be sustained.

As some trucks are being operated under certificates which were issued on these applications, because of the present war emergency we direct that the mandate herein be stayed until Au-

[5] A method of objection to improper practices, such as unreasonable tariffs or irregular accounting, by motor carriers under Interstate Commerce Act, part II, is provided by Section 204(c), as amended.

gust 1, 1945, to allow opportunity for such steps as the respective parties may deem advisable. See *Yonkers* v. *United States*, 320 U. S. 685, 321 U. S. 745; *Public Service Commission* v. *United States*, 323 U. S. 675.

Reversed.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE concur for the reasons stated in the dissenting opinion in Nos. 507-8, *Interstate Commerce Commission* v. *Parker*, decided today.